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MEMOIRS

Relating to the

1202 d. 7

Impeachment

O F

THOMAS

Earl of *DANBY*,

(Now Duke of *LEEDS*.)

In the Y E A R 1678.

Wherein Some Affairs of those Times are
Represented in a Juster Light than has
hitherto appear'd.

With an *APPENDIX*,
Containing the *Proceedings in Parliament*,
Original Papers, Speeches, &c.

L O N D O N:

Printed for JOHN MORPHEW near
Stationers-Hall. MDCCX.

St. Helena

MEMOIRS

Relating to the

Triumph of the



7th Dec 1878

Received from the British Museum

the following

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The PREFACE.

IT is no New Thing, nor at all out of Practice in our Days, to see Good Men misrepresented, and Bad ones cry'd up with the Character of Worthies: But to see such Libellers go unpunish'd, as have dar'd to put in Print the most Scandalous and apparent Untruths against the Greatest Men in the Realm (among whom that Truly Deserving Nobleman who is the Subject of these Papers, has not wanted a sufficient Share) is what I confess seems somewhat unaccountable in any well-govern'd State.

That this has been the Duke of Leeds's Case, is too well known; whose Eminent Services for his Countrey brought upon him an Impeachment, wherein he was Represented as the

THE PREFACE.

Protestant Religion; others, who have abandon'd and formally abjur'd it, to take up the Romish, and serv'd the Interest of France without Disguise, have not only gone unpunish'd, but have been countenanc'd as the Chief Supporters of our Religion and Laws, and the former reckon'd the Betrayers of our Constitution. But as God has hitherto Protected this Duke against his Enemies in so many transcendent Instances of their Malice, so I doubt not but his Merits will yet meet with a suitable Reward: Which ought to be the Sincere Desire of every Man that wishes well to the Church and Nation.

Virtus Invidiam Superat.

April 22, 1710.

M E.

MEMOIRS

Relating to the

Impeachment

O F

THOMAS

Earl of DANBY.

INTRODUCTION.

THE following MEMOIRS have lain *Dormant* for some Years, only waiting for the Stamp of his GRACE's Approbation, when He should think it a proper Time to appear in his own Cause. And since He has now been pleas'd to make Publick Some of those LETTERS which pass'd to and from
B Him,

MEMOIRS, &c.

Him in the Years 1676, 77, and 78, I have ventur'd these Papers abroad. And as they were intended to set Some Affairs of those Times in a just Light, so I freely submit to Judgment, whether I have perform'd my Task: Not assuming to my self the Title of a *Learned and Impartial Hand*; as a late Writer of History has done; and at the same time plainly evidences to the World, "That Virtue and Honour may be justly traduc'd; Vice, tho never so enormous, applauded and set off; the best Friends forsaken; and even the Actions of Kings censur'd and aspers'd; Honesty and Conscience quite lull'd asleep; and all this *Impartially* perform'd, as Guineas rise in Number, or Places fall for Preference. The only Reason I have to hope these Papers will meet with a favourable Reception, is their attempting the Defence of One of the most Serviceable, Illustrious, and Worthy Noblemen of *Great Britain*; and who will be to Late Posterity so acknowledg'd, by all True Lovers and Defenders of our Constitution both in Church and State.

A LET.

LETTER

TO A

MEMBER of the House
of COMMONS.

Written in the Year 1679.

S I R,

HAD You been a Member of the last PARLIAMENT, You could not have been so great a Stranger to the Earl of *Danby* as I perceive you are, his *Lordship* having long been a Member of that House, and in very great Esteem there: But since you are pleased to say you know him not, and are in great Doubts what to believe of Him; finding so many Stories contradicting one another, and such an extraordinary Violence in some Men, as makes you suspect whe-

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ther Malice may not have too great a share in his Prosecution: And that You have so good an Opinion of Me, as to believe what I shall say; I do assure You I shall be as faithful to You, in relating nothing but what You may depend upon for certain Truth.

The said Earl after a faithful Discharge of his Trust as *Treasurer* of the Navy; both to the Satisfaction of his Majesty, and to the great Content of the Seamen, about *Midsummer* 1673, had the Honour conferred upon him of *Lord High Treasurer* of *England*; which he managed with so great Prudence and Success, that contrary to all Men's Expectations, but especially of his Enemies, (who assured themselves of his immediate Ruin by that Preferment) He supported for near six Years that Condition of his Master, which it was not then thought could have been made to subsist so many Months, and without any Supplies or Burdens laid upon the People in all that Time: Whereas it is well known, that no Year passed before his Administration in the Treasury, that did not cost the People Five, Ten, or Twelve Hundred Thousand Pounds, and sometimes double those Sums.

It was not without great Reason that this Lord's Ill-Willers did then assure themselves

selfs of his Downfal ; because of the improbability of his performing those great Works, which were at that time upon his Hand, with so small a Stock as was then left him to work withal : And the Confidence they might reasonably give themselves that he could have no Relief by Credit, which had newly received the most Fatal Blow that was ever given to it in any Kingdom.

Soon after that time a Peace was concluded with the *Dutch*, after a long and chargeable War, and the greatest Fleet that ever yet this Kingdom had was then to be paid off ; as also an Army which had been raised for the said War ; which together amounted to about Eight hundred Thousand Pounds to discharge both, as will appear by those Accompts ; and there remained for that Use not much above Four hundred Thousand Pounds, of the last Twelve hundred Thousand which had been given to His Majesty by Act of Parliament about a Year before this Lord's Entrance to the Treasury ; and that Remainder was upon the Fourth, Fifth and Six Quarters of that Tax, which were then to come, and consequently of no Use for present Payments of the said Fleet and Army, but only as Money could be borrowed after such a Breach of Credit as aforesaid.

MEMOIRS, &c.

Notwithstanding all which Difficulties, and the Endeavours of some Envious Men to make that ill Time of Credit yet worse to this Lord, He did not only pay off that whole Fleet and Army, but discharged the Seamen of that Fleet with ready Money; which had never been done before but with Tickets, or part Tickets, and part Money. And whereas it had been usual to have Ships lie undischarged two, three, or four Months after the times they should be paid off; it cannot be said, until within a Month or six Weeks before this Lord's quitting his Place, that any Ship did lie unpaid a Week after the Books belonging to the said Ship were ready; and then there were not above one Ship or two, which hapned so by an Accident, the Money having been assigned by his Lordship to that Use in due Time.

This Lord (until Money was against his Will diverted out of the King's Revenue to the Payment of an Army raised by the Parliament) did not only provide for the Necessary, and Publick Expences of the Kingdom in his own time; but did discharge the *Tards*, which were in Arrear at the time of his receiving the Staff, to the Sum of Ninety five thousand Pounds and upwards. He did the same to *Tangier*, to the Sum of Forty three thousand Pounds
and

and upwards; and in old Tickets, and to sick and wounded Men, to the Sum of Ninety three thousand Pounds and upwards, all incurr'd before his Lordship's time. Many great Arrears of the Household were also discharged by this Lord, to the Sum of Seventy nine thousand Pounds, or thereabouts, And altho' there was a Suspension for part of the Household for one Year in his time; yet notwithstanding the great Necessity of the Crown, that also was satisfied by his Lordship, long before his leaving his Employment.

But that which is worthy of as great Honour to his Lordship, as it ought to be of Infamy to the Authors of that unjust Action, is, that by this Lord's Care a Satisfaction was given to many starving Orphans and Creditors, who had been put in that Condition by the stop of the Exchequer, to the Sum of Twelve hundred thousand Pounds, or thereabouts; and this he did at a time when the Crown was not only in want, but when the Parliament had never contributed one Farthing towards it; whereas those People had been deprived and robbed of their Estates and Livelihoods, lent to his Majesty, in times when the Exchequer had been as much fill'd with Superfluity of Aids from Parliament, as it was deprived of necessary Supplies in this Lord's time.

Besides these Expences at Home, there happened in this Lord's time almost a constant War with *Algiers* (from whence also this Lord did once make a total Redemption of our *English* Slaves), and a Rebellion in *Virginia*; which was both very chargeable in the Expence of it, and hath been a great Abatement in that considerable part of the Customs which is brought in by Tobacco from those Parts: Infomuch, that whatever is said of this Lord's not having employed the Treasure to Publick Uses, must certainly proceed either from great Malice, or want of due Information: As truly I believe it doth with most Men.

I offer not here to say any thing in Vindication of this Lord, which needs private Testimony to make it good; because all I hope for from the present Age (if that can be had) is, That they will admit what their own Eyes may be witness to, if they please; and therefore, as I have told you what this Lord hath done upon Record in his Employment, as Lord Treasurer, without any Assistance of Parliament: So I shall remind you what upon Record he hath wanted to serve the Crown withal, which his Predecessors did receive Yearly into His Majesty's Treasury; viz. By a great Abatement by the Corn-Act, which did not for some Years take less than Threescore

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of the *Earl* of DANBY. 9

thousand Pounds a Year from the Customs: By the Act for Prohibiting the *French* Commodities, which hath not lost less than One hundred and Fifty thousand Pounds a Year from the said Revenue; besides the inconvenient manner of Re-payment of the Two hundred thousand Pounds borrowed on the Excise, by one Fifth thereof being deposited in the Exchequer, which might have been repaid with much less Charge and Prejudice to His Majesty's Affairs; and besides the Abatement of Sixteen thousand Pounds of their Tax to the City of *London*, and the Forgiveness of their Hearth-Money, &c. to the Town of *Northampton* for several Years; and many other Things of that kind: Amongst which, I doubt not but his Kindnesses to the City of *London*, upon divers other occasions, besides the Abatement of the Tax aforesaid, must be acknowledged; as in the Disputes about the Water-Bailiff, *Hungerford-Market*, &c.

As this Lord's Care was very great to see Money applied to the most Publick Uses, (as will appear by the Weekly Certificates in the Exchequer; to which I do appeal) and from which Publick Uses, he never diverted one Penny, that was so appropriated

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propriated (notwithstanding the many false Suggestions to the contrary) so he was no less industrious in the Improvement of His Majesty's Revenue, the great Branches whereof he found in this State; viz. The Excise newly Farmed for Five Hundred and Thirty Thousand Pounds a Year, for Three Years then to come, which he ordered so to His Majesty's Advantage, that he found Means to resume the said Farm, and to let it immediately to the same Persons, and for the same Time, for Five Hundred and Fifty Thousand Pounds *per Annum*; and at the Expiration of that Time, his Lordship so managed it between a Farm and a Commission, as did produce above Six Hundred Thousand Pounds a Year; until a Reduction was made in that Revenue, of betwixt Forty and Fifty Thousand Pounds a Year, by the Prohibition of *Brandy*, &c. The *Hearth-Money*, his Lordship found valued at One Hundred Forty Five Thousand Pounds a Year; which was improved by his Lordship to One Hundred Sixty Two Thousand Pounds *per Annum*. And the Customs would not have turned to any worse Account in Proportion, had it not been for the Hindrances I have mentioned, of the *Corn-Act*, *Prohibition-Act*, the Rebellion in *Virginia*, &c. And in *Ireland*, his Lordship also raised the Revenue there, from

from One Hundred and Ninety Thousand Pounds, to Two Hundred and Forty Thousand Pounds *per Annum*; insomuch, that in the Branches of the *Excise* and *Hearth-Money* alone, and in the *Irish Revenue*, his Lordship increased One Hundred and Thirty Seven Thousand Pounds to His Majesty's Income.

It is likewise observable, That, notwithstanding the great Shocks newly given to Credit, this Lord did very rarely pay more than Eight *per Cent.* for Money borrowed; and it will appear, that he found very little that did not cost His Majesty Ten *per Cent.* at his Entrance.

His Lordship, not having wherewithal to satisfy all Things, did chuse to let it fall short in Pensions, and lesser Payments to private Persons, rather than that the Publick should want, so far as he was able to supply it. And yet I dare take upon me, by Proof in the Exchequer, to aver, that even those Payments were much better made than they had been at any Time before, within the same Space that this Lord was Treasurer, as may appear likewise by the Certificates of the Exchequer.

Next to the not having the Management of this Lord truly represented to the World, I find his Services have been chiefly blasted with a false Suggestion of his Squandering

dring the King's Treasure to private and unnecessary Uses, under the Name of *Secret Service*. And therefore, for the more ready and certain way of disabusing the World in that Particular, and doing His Majesty, as well this Lord, Right therein, I shall desire any Man to take a Computation of His Majesty's Yearly Revenue (which, within a very little, is known to most Men) and when he has summ'd up, what hath been publickly Accompted for each Year (which, by the Certificates of the Pells, will be found to be Eight Millions Two Hundred Seventy Six Thousand Seven Hundred Sixty Seven Pounds, from *Easter, 1673. to March, 1679.* besides the Interest to the Goldsmiths, and divers other Particulars, which are not included in that Accompt;) let him compute what there could be Remaining possible, to be laid out to other Uses, and he will find, that if all that was the possible Remainder had been laid out extravagantly, it would be a very inconsiderable Sum, in Comparison of what the World is made to believe.

In the next Place, it is well known to all, who are vers'd in the ways of the Exchequer, that many Sums are included in the *Privy-Seals of Secret Service*, which are either for Expedition of *Publick Services* upon sudden Occasions, or to save paying

of

of greater Fees, where His Majesty is pleas'd to let it be so; as in the Case of the Lord Treasurer, and Chancellor of the Exchequer's Salaries, &c. (which were so paid, till lately altered by this Lord); and I am confident, that there is no Year, wherein one Third at least, if not half of the Payments under the *Privy-Seals* of *Secret Service*, might not be exposed to a publick Account, as well as any other Payments.

And whereas it is objected, That the Sums now paid for *Secret Service*, are much greater than formerly, nothing can be more untrue; but the Mistake lies in this, That formerly great Sums were commonly paid to a particular Person by a *Privy-Seal* for some publick Use, and Money was commanded from that Hand to private Uses by particular Orders and Commands, which were never seen in *Privy-Seals* for *Secret Service*; but were discharged by *Privy-Seals* afterwards, upon passing their Accounts: For it is well known, that in Five or Six of the first Years after the King's Restoration, there was more Money given to particular Persons in every Year of that Time, than has been paid to private Uses in the whole Time of this Lord's being Treasurer; and yet I am confident, that scarce one Shilling of those great Sums appear under any *Privy-Seals* of *Secret Service*;

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Service; so that in truth, this which is imputed as a Crime, was one of the most useful Services this Lord could do, to let the King see by a particular Account, what those Expences came to, which were formerly so huddled up, that His Majesty could not be sensible of the Greatness of those Disbursements.

Lastly, I dare as confidently affirm, that Payments to *Secret Service* (that is to say, such Payments, whereof His Majesty will not permit any Account to be made but to Himself) have never amounted to One Hundred Thousand Pounds; nay, I durst say, not Eighty Thousand Pounds a Year, one Year with another, since this Lord served his Majesty in that Employment; and I suppose that none of His Subjects do grudge Him that Sum to His private Use: But upon this Occasion, I cannot forbear to observe the Unhappiness of this Lord, who suffers in the Opinion of many for having wasted the King's Treasure, to gratify some particular Great Ones; and I am not without good Assurance, that his Refusal to serve such Ends, and his being firm to the Interest of his Master, and the Kingdom, in that Particular, is no small Cause of his present Sufferings.

To conclude this Point, about this Lord's Behaviour in his Office of Treasurer, I must

must needs say, I know not whether this Lord, or We the People of *England*, are the more Unhappy, who can so easily be drawn by false Reports, to have the worst Opinion of our best Ministers; when the single comparing of this Lord's Administration in his Employment of Lord Treasurer, with former Times of great Plenty, might convince any Man, there never was a better Officer in that Station; and to those who will not take that Pains, I will appeal to another sort of Evidence from Coffee-houses themselves, whether the good Husbandry of this Lord for his Master, hath not been heretofore (and not long since) as much complained of, as his wasting the King's Treasure is now pretended to be a Charge against him; nay, even to the making that a Crime of State, and laying it to his Charge at that time, as a Design, by good Husbandry, to keep off the Use of Parliaments.

What I have said concerning this Lord's Administration in his Office, as Lord High Treasurer, I have spoken upon certain Knowledge; and what I shall now say in relation to his Transactions in the Affairs of State, are partly so, and the rest upon such Assurances, that I am no less confident of the Truth of them. And in the first Place, I know that many besides my
self,

self, have often heard his Lordship complain of it as an infinite Misfortune to him, that His Majesty did take him so much from the Business of the Treasury; whereby he was neither able to make those Improvements, which otherwise he could have done in His Majesty's Revenues; nor could he give those Dispatches which were necessary for his Service; insomuch, that I know it was with all the Regret imaginable to himself, that he was employed in any other Business, but that of his Office as Treasurer.

In the next Place, I know how unwillingly he entred into any of the Foreign Transactions; having always shewed himself averse to those Councils, wherein he found His Majesty engaged at his Entrance; viz. The Tripple League broken, which I have often heard this Lord say (and am confident he ever affirmed in all Places) was a Bulwark both to this Nation, and all *Christendom*, and that the Breach of it would be fatal to us.

A War with the *Dutch*, made upon the Foundations of a Stop of the Exchequer at Home, and an Endeavour to have seized the *Dutch Smyrna Fleet*, before a War declared.

A League with *France*, by which they were to have the Opportunity of sending

a Fleet to learn Conduct at Sea from us, (of which they were in a great measure then ignorant) and to know both our Channel and our Ports.

An Army of *English* then in *France*, (to the infinite Prejudice of the Confederates upon several Occasions) against all which, this Lord's greatest Enemies cannot say but he always declared himself. And no Man that was least concerned with the Cause, could more publickly inveigh than this Lord did at that time, and ever since, against the perfidious Behaviour of the *French* Fleet in that Battel where Prince *Rupert* commanded, for which I have often heard him complain of their Treachery, and say, that we deserved it for trusting them.

As these were the Circumstances wherein all the World knows this Lord found Things at his Entrance, so I desire that Men would only remember Times, and consider in such deep Engagements of Princes to one another, as were then between the Kings of *England* and *France*, whether it were possible in a very short time to get Things reduced to such a Posture as might have been wished. Upon this occasion much more might be said if it were convenient; but I shall make only one Remark upon it, and desire it may be thought on seriously; whether it be not the most un-

safe, as well as most unjust Practice, for a Nation to discourage such Ministers as endeavour to draw their Master to His Kingdom's Interest, although they do not immediately Succeed in it: For unless they could command their Master's Will, instead of Obeying it, these Consequences must necessarily follow, that either his Ministers must quit his Service, or keep it only by following the Pleasures and Inclinations of their Master entirely, or have their Dependence upon some other Power than their Master's to protect them. For the Danger of their Ruin, from the Impatience of the People, will not afford time to get those ill Habits in Government changed, which have been long contracting, and cannot be alter'd but either by Council or Force.

I desire therefore now, that the Proceedings of this Lord may be impartially consider'd, and see whether they have not all tended to the Diminishing of the *French* Interest amongst us since his Time; and if it have diminished, it will be hard to find who else there was besides himself near His Majesty, who had Power, and Inclination to do it, since it is not reasonably to be lookt for from any who had been Advisers against the Triple League, &c. nor from any who were engaged in the *French* Service themselves.

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In the first Place therefore, to shew that the *French* Interest was much diminished since this Lord's having the Staff, is manifest: For that League with *France* was broken, and Peace made with the *Dutch*, the Duke of *Monmouth* was called from *France*, and our Army drawn out of their Service; and it is well known how much He laboured by refusing Passes, and all other Means in his Power, to have hindered any of those Recruits, which by Stealth were sometimes conveyed to them.

But above all, it is notoriously known, that he was the Chief Instrument of procuring the Marriage of the Lady *Mary* to the Prince of *Orange*, by which he hoped a Future Security for the Protestant Religion would be provided; and his present Hope was, That the *French* Interest, in this Court, would thereby be rooted out; which in all Probability had been effected, if the Parliament had been so happy as to have given the Six hundred thousand Pounds demanded by the King at that time for Preparations; when instead thereof, they only gave Credit to borrow Two hundred thousand Pounds upon the *Excise*; by which, I have heard, the King was so discouraged, as did extremely hinder what this Lord hoped, and endeavoured to obtain in behalf of the Confederates: And were the

Transactions of that time between the Prince of Orange and this Lord, known to the World, they would as highly esteem him for his worthy Endeavours, both in relation to his own Countrey, and to the Confederates Interests, as he is now unjustly calumniated for the contrary. But to omit private Negotiations, (which it is this Lord's great Misfortune, are not seen) every body knows that the Match of the Prince of Orange, did produce so great an Alteration in the Minds of the Duke of York, and Duke of Monmouth, that from being the greatest Assertors of the French Interest, they became as forward as any for the War against France; and then the King's good Intentions were protracted by the extreme Dilatory Conduct of the Spaniards about Ostend, &c. and the want of Money sufficient to carry on so great a Work; till the French King had got Opportunity of making himself so sure of Peace with Holland, that nothing His Majesty could do, was able to hinder it. For although He both sent a considerable Army to the Prince of Orange, and demanded of the States to make good the Offensive Treaty lately made with His Majesty, they absolutely refused to continue the War any longer.

During those great Uncertainties betwixt Peace and War, occasioned from the Cau-

I have already mentioned, Proposals were made to His Majesty, sometimes by the *French* Ambassadors here, and sometimes by Mr. *Montagu* (His Majesty's Ambassador in *France*) for a Peace, and always with Offers of Money, in case His Majesty would consent to worse Conditions than the Confederates would agree to; and the Offers so large, in case the King would agree to let the *French* possess some Towns which the Confederates insisted upon to have restored; that if His Majesty would have accepted any such Conditions, He might have had great Sums at this time in his Purse, and the Confederates might have had many of those Towns in their Possession at this Day, which are now given up to the *French*; and it is to be seen in a Letter of Mr. *Montagu* to the King himself, that the Earl of *Danby* might have had more than ever he got by being Lord Treasurer, if he would have prevailed with the King to agree to the Propositions of the *French* King.

But, as the said Mr. *Montagu*, hath by Letters confessed the Honour of this Lord, who would be no Instrument in that Work, and hath in the House declared, That when it came to the Business of *France*, he should do that Lord as much Right as any Man; so just also was His Majesty therein to the

Confederates, that He would never yield to any Proposition which was not with their Approbation, altho' the Continuation of His Ambassadors at *Nimeguen* was a very great Expence to Him: And if His Majesty, or His Ministers had intended the setting up an Arbitrary Power at home, they would certainly neither have disoblged the *French King* as they have done, nor have refused his Money, both for themselves and their Master, which was in their Power, if they would have deserted the Confederates Interest, which could be of no Use to them in the Execution of any Arbitrary Designs at Home.

From hence it appears wonderful, that any of the Ministers (and especially such as were taken to have the best Credit with His Majesty) should be charged with those Designs of Arbitrary Power; because nothing is more evident, than that it was their own Fault if they had not wherewithal to have maintained Armies, and enrich themselves, besides the keeping of the *French King's* Friendship to have assisted their Ill Designs; insomuch that if Men will but consider impartially, it will puzzle the most uncharitable Censurer to find another Cause than their Unwillingness to enslave their Country, why so many Temptations of that kind were rejected, and at a time when Armies were in readiness, if they had designed any such Use of them. I

I know that to offer any Arguments which are not publickly known, in behalf of this Lord, would be to no purpose at this time, when Men have not Patience to let themselves be informed; but I hope this Lord's patient Suffering will at last obtain a patient and impartial Hearing, and then themselves will be Judges what sort of Friend the *French* have ever taken him for to this Day; their *Gazettes* having constantly declared their ill Wills to him, and the present *French* Ambassador's usual Discourses of him at the Dutches of *Mazarine's*, (where he is apt to speak more freely) may convince any Man; which a Lord of your House can testify (if he pleases.) Mr. *Montagu's* Letters also, which were shewed to the House of Commons, do sufficiently make appear, not only their Dislike of him, but that it was a Maxim amongst them, That *He must be Ruin'd, before they could hope to do any Good in England.* And by those Letters you will see also what Agents, viz. young *Monsieur Ruvigny*, &c. have been employ'd hither for that purpose, and even about the very time, as well as since the Writing of that Letter to Mr. *Montagu*, for which he is so much blamed, although the Letter be written both by the King's immediate Command, and that the Matter of it (had it not been so) is so far from

from importing Treason, that in other Ages, it might bear not only a Charitable, but a wise and useful Construction both to the King and Kingdom, which was to have re-imbursed His Majesty those Sums He had laid out in that Chargeable Mediation, without bringing any Burden to His People, or any Prejudice to the Confederates.

And since I have made mention of that Letter, I desire you will observe,

First, That the Propositions sent, were only a Copy of what Mr. *Montague* was to receive from the Secretaries; so that the thing it self was no Secret to them.

Secondly, That the Propositions were not originally the King's, but the Confederates; so that the King was to gain nothing by making the Market either higher or lower; and the *French* had often had Experience, that his Majesty would not do otherwise.

Thirdly, As a full Justification both of his Majesty's Honour in that Point, and that he had no Design of getting the Money for the Purposes suggested against the Earl of *Danby*, (for in that case he would not have consider'd the Gain or Loss of the Confederates) Mr. *Montague* is expressly forbidden, not to mention the Money at all, in case the *French* King did not accept
those

those very Propositions of the Confederates, and in the Terms as his Majesty received them from his Ambassadors at the *Hague*.

And fourthly, In the last Words of the Letter, the Earl tells Mr. *Montague*, that he believes that would be the last time any Proposals of Peace would be made, and that he is confident they will not be accepted; wherefore he might accordingly take both the King's Measures, and his own.

As to that Expression about the Parliament (which I suppose hath been a principal Cause of giving them Offence) I have heard this Lord say, That his Majesty caused that Expression to be used only for a Motive to persuade the King of *France* to give a greater Sum than Six Millions of *Livres*, which had then been offered; because otherwise in the ill Posture things then stood betwixt the Two Kings, the *French* King might suspect whether the King of *England* would agree to any Peace at all. And these being the whole Contents of that Letter, and it being writ by his Majesty's express Order, you will easily conclude, this Lord would not be so hardly prosecuted for that only, were there not other Causes for it: When in truth, I believe there are very few Subjects, but
would

would take it ill not to be obey'd by their Servants; and their Servants might as justly expect their Master's Protection for their Obedience.

But one great Objection I have heard to this Letter, hath been, that it was writ the Twenty fifth of *March* One thousand Six hundred Seventy eight; which was Five Days after the Parliament had passed an Act to raise Money for an Actual War with *France*: Which is very true: But it is not consider'd;

First, That an Act to raise Money for a War, is no Declaration of the War.

Secondly, That till such Declaration, all Treaties are lawful, and even then too, if the King pleases, in whom the sole Power of making Peace and War is placed by Law.

And Thirdly, That the King's Ambassadors were actually then at *Nimeguen*, treating of Peace; and were indeed never recalled, nor forbidden to treat of the Peace.

And can it be thought a Fault for a Minister to obey the King's Orders at Home, on the same Subject upon which other Ministers were acting at the same time Abroad?

Fourthly, No Money was then raised, and but few Men: Our Islands were unprovided, nor could they so suddenly have had

had due Notice of the War, and the French had a great Fleet in the *West-Indies*: So that if the War had ensued, it had been Policy to have kept them in expectation of Peace, till we had been better prepared for so Potent an Enemy. And although it was but Five Days after the Act for raising Money towards a War, (and the Nation then so totally unprepared for it,) yet you may observe this Lord in his Letter says, that he believes it would be the last time that any Peace would be proposed, if that was refused: And you may likewise observe, that if it had been accepted, it must have gone formally by the Secretaries of State, after the Answer of Mr. *Mountagu* had been returned to those Letters of the Twenty fifth, which could not have been till April following, at soonest: So far was it from being thought a Crime in any other of his Majesty's Ministers to have Treated betwixt *France* and the Confederates, till either a Peace had been concluded betwixt them, or a War declared by Us. And had it been otherwise, his Majesty's Ambassador at *Paris* must be in as much (if not more fault) to have obeyed the King's Orders at second hand, than this Lord was, to obey his Majesty's immediate Commands from his own Mouth, and Signed by his own Hand.

In

In short, it would be ill for Ministers of State, and worse for their Masters, if the one may not command, and the others be obliged to obey, in such undoubted Rights as are all the Matters and Circumstances of Peace and War. And no Construction in the World can be more strained, than that the Six Millions of Livres a Year for Three Years, should be intended for the introducing of an Arbitrary Power; when it is apparent that they might have had Six Millions for the First Year, if they had pleased; which would have as well sufficed to have done that Work, as the having it for Twenty Years more; since every Man knows that such a Work must either be done at the first Attempt of it, or not at all: So as in truth, if we lived in an Age to make but equal Interpretation of Men's Actions, we ought rather by it to judge of the Sincerity of the Prince's Heart towards his People, and the Integrity of his Ministers, who would not be tempted to bring things to that Conclusion (though in their Powers,) which others may more reasonably be supposed to have designed, who began with those Breaches of the *Triple League*, &c. which I have already mentioned. And yet to admiration, most of those who were the first and Principal Causers of these ensuing Miseries, are esteemed

esteemed Patriots of our Liberties; whilst the whole Blame is laid upon this Lord, whose Endeavours have been incessant to have got us out of those Misfortunes he found us in; without any shadow of an Action to the contrary, but what is drawn by a forced and uncharitable Construction of the foresaid Letter, writ by the King's Order, and concerning Matters wholly in the King's Breast by Law to act and determine as he pleases.

But to confirm us yet more, that this Lord's Integrity was too strong to be battered'd down by the foregoing Pretences alone; it has been necessary for his Enemies to raise another stronger than any of the Rest, in shew; because the First (altho' called Treason) would not by our Laws bear the Title either of *Treason* or *Felony*; but this also proves so weak in its Foundations, that this Lord's Adversaries are forced to support it with Libels of his being privy to Sir Edm. Bury Godfrey's Murther, and such like Improbabilities, whereby they help this Lord to undeceive the People instead of promoting their own Designs against Him; and just so in the same *Libels* (besides the many gross Falsities in Matters of Fact) the Author's Malice hath made him forget that what he designed for a Charge against the said Earl, was an Accusation against
the

the Witnesses, the Jury, and the Judges who Tried and Condemned *Dread, Berry, Hill, &c.* for the said Murders.

This second Attempt (whereby they hoped to blast the Earl's Reputation amongst the Common People, if they could do nothing else) was, That he had concealed the Popish Plot, to the endangering his Majesty's Person, and had conspired with the Papists to have given them the Opportunity of putting their Hellish Designs in Execution.

What Probability there is for such Suspicion, might appear sufficiently both by the Contradiction it must have to his own Interest, and by the Ill-Will the Popish Party have always shewed against Him; and the little Favour He has received either from them, or any that have related to them; but on the contrary, there are Examples of such, who have appeared as bitter against Him, as any of his Enemies.

But that the Truth of the Earl's Behaviour in this particular may be as well known, as in the other Matters with which He is traduced, I will give you an Information of what I certainly know to be true in that Business.

I am not able to set down the exact Days, nor is it necessary, but about the Middle of *August*, 1678, and the very Morn-

Morning that the King went to Windsor that Year with the whole Court, His Majesty left a Pacquet with a Person of Quality, which was sealed up, and commanded him to carry it to the Earl of Danby, and to tell him, that one Mr. Kirkby would bring a Gentleman to speak with Him about it.

The Earl opening the said Pacquet, and finding therein Two or Three Sheets of Paper, containing several Heads of Informations of Danger against his Majesty, gave Order immediately to the Porter at his Gate, That if one Kirkby did come to speak with the Earl, he should immediately be brought to him.

Accordingly the said Kirkby did come thither that Day, or the Day following, and did bring with him one Doctor Tongue, who told the Earl, That he had delivered some Papers to the King of great Concernment: That the King had looked superficially over them, and said he was going out of Town, but would send the Papers to the Earl of Danby, and would have him to wait upon the Earl about them.

The Earl shew'd the Papers to the Doctor, and asked if those were they: Which he said they were.

Quest. Whether they were Originals

Ans.

Answ. No, They were Copies of his the Doctor's Writing.

Quest. Who was the Author? and where were the Originals?

Answ. He did not know the Author, for that the Originals (which he said were in his Custody) had been thrust under the Door of his Chamber, but he did not know by whom, only he did fancy it must be one that had some time before held Discourse with him tending to such like Matters.

Quest. If he knew where to find that Man?

Answ. No: But he had seen him lately Two or Three Times in the Streets, and it was likely not to be long before he should meet him again.

About Three or Four Days after, the Doctor came to the Earl again, and told him, He had met the Man; that it did prove to be as he had guess'd; that he owned himself to be the Author, and had given him another Paper of the like kind as before, numbred in to Heads as the first was, but desired not to have his Name known to any body but the Doctor, because the Papists would murder him if they knew what he was doing.

Quest. Whether the Doctor knew those Men, who were called Honest William, and Pickering, who were named in those Papers

Papers as Men design'd to Assassinate the King.

Ans. That they used to walk frequently in St. James's Park; and if any body were appointed to keep him the Doctor Company, it was Two to One but he should have an Opportunity of letting that Person see one or both of them in a little time.

Quest. If he knew where they lived? For that it would be necessary to secure those Men forthwith.

Ans. He knew not at that time, but would inform himself, and let his Lordship know very speedily.

Hereupon his Lordship went immediately to Windsor, and acquainted the King, That Dr. Tongue had been with him according to his Majesty's Directions; and inform'd his Majesty of all that had past, (shewing also the Additional Paper to those which had been sent his Lordship by his Majesty) and that he had left a Servant at London, purposely, to get a Sight of Honest William, and Pickering, in order to the apprehending of them, if his Majesty thought fit.

At this time his Lordship desired the King, That one of the Secretaries might send a Warrant for the Apprehending them, and that the matter being of such danger to his

Majesty's Person, some more of the Council might be acquainted with it. But his Majesty would neither let the Men be apprehended, till He were more informed of the Design; nor would He suffer the Earl to speak one Word to any Body of it: But on the contrary, commanded the Earl should not speak of it, so much as to the Duke of York; only said, He would be very careful of Himself till he heard more.

The Earl went from Windsor to his House at Wimbledon in Surrey, directing, That if the Doctor had any thing more to say to Him of that Matter, he should come to Him either, or send away that Gentleman the Earl had left to stay with him to see the Men, and learn their Lodgings, and to be diligent in bringing any Intelligence, which required Haste.

Accordingly, that Gentleman did go from London to Wimbledon, every Day, and back to the Doctor at Night; and did sometimes bring additional Papers to the former; and brought Information of the Dwellings of honest William and Pickering; and brought Word also from the Doctor, that he said, He should be able to give his Lordship certain Notice before-hand, when any of them were to go to Windsor; of all which the Earl never failed to give his Majesty an Account from time to time.

Among

Among other Informations, the Doctor went one Night to *Wimborne* himself, and told his Lordship, that some of the intended Assassins were to go the next Morning to *Windsor*; but that he could order it so, that the Earl's Gentleman should go in the same Coach with them; or if the Coach should be full, he might go on Horseback in their Company, and watch them, so as to give Notice of their Arrival, and take them more conveniently that way upon the Place, where they would not be able to give any Account, what they had to do there.

Herenpon the Earl ordered this Gentleman to observe the Doctor's Directions, and went immediately himself to *Windsor*; where he acquainted His Majesty with all this; and Order was taking for seizing these Men at their Arrival at *Windsor*; but instead of that, the Gentleman brought Word from the Doctor, that something had prevented their going that Day; but that they intended their Journey the Day following, or within Two Days at farthest; but then also News was brought, that they were again prevented, by one of their Horses being slip in the Shoulder, or some such Accident.

Whereupon His Majesty (who before would not give Credit to it) did then take

it for so mere a Fiction, that, notwithstanding all the Earl could say, to get the Business communicated to others besides Himself, the King was more positive not to permit it, saying, He should alarm all *England*, and put Thoughts of Killing Him into Peoples Heads, who had no such Thoughts before.

The Earl, having done all that lay in his Power, and having Business into *Oxfordshire*, askt Leave of His Majesty to go thither (being but Twenty Two Miles from *Windsor*, whither he could return in half a Day) and left Order at *Wimbleton*, to have any thing dispatch'd to him, that should come from Doctor *Tongue*: Accordingly in Three Days after, came a Letter from the Doctor to the Earl, giving Notice of a Pacquet of Letters from *Jesuits* concerned in the Plot, which were to go to the Post-house in *Windsor*, directed to one *Bedingsfield*, a Priest. Whereupon the Earl returned immediately to *Windsor*, and informed His Majesty, shewing the Doctor's Letter; and His Majesty replied, that there was such a Pacquet had been delivered some few Hours before, by the said *Bedingsfield*, to the Duke of *Tork*; and that *Bedingsfield* had told the Duke, he feared some Ill was intended him by the said Pacquet, because the Letters therein seem'd to be of a dangerous

gerous Nature; and that he was sure they were not the Hand-writing of the Persons, whose Names were subscribed to the Letters.

This still begot less Belief in his Majesty, that there was any real Plot; inasmuch, that I have heard the Earl say, He doubted whether ever he had been permitted to produce these Papers; and Intelligence he had received from Doctor *Tongue*, if His Royal Highness had not been earnest to have the Truth of those Letters examined, which had been brought to him by Mr. *Bedingfield*; by which Means he got Leave at the same time to produce the said Papers, and Letters to the Council; and from thence they have all been transmitted to both Houses of Parliament, in one of which they remain at this Day.

When they were first produced to the Council, and Doctor *Tongue* brought thither to attest them, the Doctor then said, He was sorry they had been disclosed so soon; and that it would have been much better, and more would have been discovered, if the Business had been kept concealed some time longer.

This was owned by the Doctor himself, and attested in the House of Commons by Sir *Thomas Doleman*, one of the Clerks of the Council then in waiting; and the Do-

Earl had often said to the Earl himself, that it would much prejudice the full Discovery of it, if it were made publick too soon. *blow* (1699) *only* *will* *to* *no* *concerning* *the* *Plot*) This is the Sum of what passed between the Earl, and Doctor Fagoe, from whom only his Lordship had any Intelligence of the Plot; and the Doctor hath given an Account accordingly to the House of Commons, only with the Addition, that he always found all the Readiness and Assistance from the Earl, he could desire; and as to Mr. Owen, till he was brought into the Council Chamber to attest the Truth of the Doctors Papers, *Earl* I am confident the Earl never saw his Face, (although like other Pallihoods, it hath been printed, That the Earl used to meet him at *Earl Hall*, and that he invented the Plot with Mr. Gates long before His Majesty sent the fore-said Papers to the Earl.) But as the Doctor (with whom only the Earl had any Correspondence in that manner, saying Mr. Fagoe, who brought the Doctor to him,) hath fully justified the Earls Proceedings, both in the House of Commons, and other Places, so (besides the Oath made by Mr. Owen in the House of Lords and Council, that he knew nothing against any Peer, but whom he had then mentioned,) I have not heard that Mr. Gates hath

said any thing against the said Earl. Mr. Bedloe indeed hath said that this Lord, (though at that time under the Accusation of concealing the Plot,) would have tempted him by Money, to have been gone beyond Sea, and not to say any thing against the Queen, nor the Popish Lords in the Tower. But when the Circumstances of that Story come to be told, (which are not yet convenient) I suppose Mr. Bedloe will think it fit to retract that Information against his Lordship, as he hath already done another he told to the late Bishop of Landaffe, (now of Peterborough) concerning the same Lord, viz. That this Earl was one of those at the Consult with the Queen, in her Chapel at Somerset house; but the Earl complaining of this in Council, Mr. Bedloe did not only deny that ever he said so, but told the King himself, and several others (besides his Oath in the Lords House, relating to all the Lords,) that he knew nothing against that Lord; and has told the Earl himself, in the hearing of good Witnesses, That he was able to say several things in his Lordship's Defence; and that there were some Persons, (and amongst them one Great Man) who would have endeavoured to suborn him to swear against the Earl; but Mr. Bedloe said, He was not a Man to be gained to do

any such base Act; and as a Demonstration of his Honesty and Justice to the Earl, he brought him the Copy of an Information reflecting on the Earl, and signed *Ed. Parn*; and promised to inform the Earl of the Name of that Great Man, and the others who would have suborned him before the Meeting of the Parliament, which was to be in *March* following; and he sold this to the Earl in *February* before
 Mr. *Dugdale* (who is one of the most material Witnesses of the Plot) was before his coming to London, examined in the County by some of the Justices there, and his Examination returned to the House of Lords, wherein he mentions the Fear the Jesuits had of the Lord Treasurer; and particularly how they were afraid, lest the Letters formerly mentioned, which were directed to Mr. *Bedingfield*, should fall into his Hands; knowing how great an Enemy he was to them; And he has spoke to the same Effect since that Time, before divers Lords of His Majesty's Council; so that what Grounds they have for accusing this Lord, either for the Concealing or Abetting this Plot, I must leave to you, and every Impartial Man to judge from the Matter of Fact.

But upon what Grounds this Lord hath been reputed a Papist, I cannot but wonder yet
 more;

more : for in the first Place he is known to have been always Educated in the Protestant Religion : and hath given constant Testimonies thereof, in all times, and without any Alteration.

He hath not only been a constant, but a zealous Assertor of the Church of England; and I pray God (that altho' it be not owned) this may not be one of his greatest Crimes.

He hath not only appeared for it in Parliament, and elsewhere, against all Opposers ; but would never agree to any Councils that might endanger it : As the Declaration in Parliament for a General Indulgence, &c. The Consequence whereof (I have heard him say) must necessarily have been an Introduction of Popery ; but 'tis true, that I have ever heard him profess that charitable Mind, as not to desire the Ruin of any Sort of Men, who would live peaceably under the Government, whatever their Opinions in Religion might be.

In the next Place, pray, let it be observed with what Kindness the Papists have treated this Lord : For so beholden is He to the Generality of that Persuasion, that they do not only for the most part speak Ill of him, but they have slander'd him in private with the Story of being the Inventor of the Plot with Mr. Over, and the Designer of the Duke

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Duke of York's Ruin. Nay, even the Murderer also of Sir *Edward Barry Godfrey*; and beyond Seas, especially in *Flanders*, it is reported of him both by Priests, and others; That he was the Original Inventor of this Plot, and that he is the Cause of all the Blood which hath been shed upon that Occasion: When at the same, he is accused of being a Papist, and a Concealer of the Plot, in concert with the Duke of York; nay, so inveterate is the Malice of some Men against this Lord, that they are resolved to make Contradictions agree, rather than want Pretences to destroy him.

One Instance whereof is, That this Lord's Design to destroy the Government, was the same with *Coleman's*; and yet it is known for a Truth, and cannot be deny'd, nor will ever be forgiven him by the Papists, that there had not been one Paper of *Coleman's* seized, but for the Case of this Lord, who caused a Warrant to be drawn for that Purpose, and got it signed by Five of the Privy-Council, after the Council was risen, who had omitted the Direction of seizing his Papers, out of the Warrant for apprehending his Person.

This alone (were there nothing else to be said for it) would be sufficient, not only to vindicate this Earl's Innocency from concealing the Plot; but to shew His great
Readi-

Readiness, and Industry to discover it.
Having given such an Account of this
Lord's Integrity, whereby he must appear,
both a good Protestant, a good English-
man, and a good Minister. I expect to
have it reasonably Objected, Why a Man
so qualified to defend Himself, should first
withdraw from his Trial, and then upon
his Appearance quit all these Defences,
(which if true, would render him Merito-
rious, rather than Criminal,) and betake
Himself to a Pardon: By which Indifferent
Men as well as his Enemies are induced to
suspect his Guilt: And lastly, when he did
insist upon the Plea of his Pardon, Why
He did not rather chuse to make that his
last Defence, (in case the Plea of his Inno-
cence should have been over-ruled,) then
make it His first Refuge, and thereby debar
Himself of all Opportunity of making his
Innocence appear, altho' he should be ac-
quitted by the Pardon: I confess these to
be such Real and Solid Objections, that
till they are answered, I can blame no Man's
hard Censure of this Lord, who without
other Prejudice may have grounded his ill
Opinion upon these Foundations.

But the Answers to them are most evi-
dent: And first, why a Pardon at all to a
Man so qualified for his Defence: hath a
Full Answer, (if nothing else could be said
for

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for it) which is, because His Majesty would not suffer that his private Papers of State which ought to be this Lord's Defence should be exposed to Publick View; and altho' a Man may as to his Innocency be fully qualified for his Defence, yet if He cannot be admitted to have those Materials which should prove that Innocency, it will avail him no more than if such Proofs were not in Being.

And he had the less Hopes to obtain them, when it was one of his Requests to the Lords upon his first Appearance at the Bar of that House, that their Lordships would please to intercede for him to the King, for such Papers as might be necessary for his Defence. To which the Lords gave his Lordship Answer, that it was not proper for them to move the King for any of his Private Papers: So as his Lordship was wholly without Hopes of getting them, or Leave to shew such as he had himself.

In the next Place why he absented Himself for some time, may perhaps not have been the least Act of this Lord's Obedience; for (to omit other Reasons) the Date of this Lord's Pardon appears in his Plea, which is the first of *March*, and this Lord did not absent Himself till the Twenty fourth of *March*; so that he was as well provided of his Pardon, the first Day he was

was absent, as he was when he deliver'd Himself to the Custody of the Black Rod; and he was as well Informed then also, that there was nothing in his Charge, (were it all confess'd) which by the Laws of England could amount to Treason; so that every Man, by his own Reason, may satisfy himself, that it was neither for the want of his Pardon, nor the Danger of his Crimes.

And for the last Objection, why he did not reserve his Pardon for his last Plea, may almost answer it self; for no body can think any Man such a Fool, as not to have done so for his own Sake if he could; and I know that nothing did trouble this Lord so much as to find he could not, (his Lordship hoping never to have used it, but in Case of False Witnesses, or to supply that defect of Evidence which was not in his Custody;) but it seems it is the Law, and all his Council were unanimous in it, that the Pardon being already granted, it must either be pleaded at First, or was void; and notwithstanding that Danger, it was with great Difficulty, that both his Council, and his nearest Relations could persuade him to rely upon the Pardon, although he knew he could not obtain that Evidence, which was in the King's Custody, nor have Leave to produce, what was in his own about the Letters; besides, that his Council told

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told him, both by Experience, and the Lord Coke's Authority to confirm it, That no Man ever refused God's Pardon, nor the King's; and His Majesty would have had great Reason to have deserted him, if he had rejected his Majesty's Grace; And yet altho' Seven Days were allowed to this Lord, for the putting his Answer into the House of Lords, it was not finished an Hour before the Delivery of it to their Lordships; and his Council, for Satisfaction of his Lordship, were forc'd to contrive the Expedient of a short Protestation, to be annexed to the Plea, as it now stands; but those who printed the Plea and Pardon, would take no Notice of the Protestation.

Now as to the granting of this Pardon, which I also hear wonder'd at: I wish any Man but to reflect upon this Case, and see whether his Majesty be not most concerned, that none of his Foreign Negotiations should be expos'd to publick View; and yet it would be so unjust for His Majesty to suffer this Lord, or any Publick Minister, to be undone for Want of producing those Things, which are necessary for his Defence; that for this Reason alone, a Pardon was not only necessary, but just; and I believe it would be difficult for any Man to propose another Expedient, which could both preserve the King's Justice to an Innocent

cent Servant, (who had only obeyed his Commands,) and that Right of Secrecy which is due from Sovereign Princes to one another in all their Negotiations, which if once broken, makes it Impracticable to treat with one another, and which is held so Sacred in all Countries, that there are many Examples of the Divulgers of them being punished with Death.

Besides, this Lord had Assurance that False Witnesses had sworn against him, and finding the Readiness Men have to believe any thing of one against whom Malice hath so many Ill Reports, and to so great a Height, as it had done against him, he could not hope to be heard but with Prejudice: And lastly, (as is commonly the Fate of Men in great Places) he had contracted the Ill-Will of divers, either by hindring some (as they thought) from Employments they aimed at; or not having procured those for some which they might expect, or by being thought the Cause of some Men's Remove from their Places; or for not having paid some, and gratify'd others, according to their several Expectations: These added to the specious Pretences which have been already mention'd against this Lord, made it but just for his Majesty to give his Protection to him, whom he knew to be innocent, and both as publickly

ly declared to both Houses of Parliament to be so.

I will not presume to say any thing about the Validity of the Pardon, for Fear of giving Offence, more than that many have needed it more than this Lord, and had it as fully granted. And I take it for one of the great Happinesses of our Government, That his Majesty hath an undoubted Free Right of granting it as he pleases: And for the Argument of Inconvenience, it may as well be urged against any Act of Mercy, the King shews; every Act thereof being as inconvenient to some, as it is merciful to others; and therefore hath the King only been left Judge, in all Ages, when and where he will dispense it; and the People would be in a miserable Condition if it were otherwise.

I will conclude with some Observations very singular in this Lord's Case. Because I think the like hath never happen'd in any other Man's.

This Lord's Accusations have been both for saving the King's Money, and spending it.

For Promoting the *French* Interest; and yet the *French* Ambassador's constant Enemy here; and in *France* it was always a Maxim, That he must be ruined before they could do any good in *England*.

For

For being a Papist, and yet the Designer of the Duke's Ruin, and Inventor of the Plot for their Destruction.

For having the same Design with Coleman, and yet being the sole Cause of having his Papers taken.

The Employing the King's Treasure to gratify particular Persons, is one of His Crimes, and yet He not doing so, is one probable Cause of His Punishment.

He is made the Obstructor of all Publick Proceedings in the Kingdom, because he was not first brought to Tryal, before the Popish Lords: And yet (besides the Difference of their Crimes) He was denied Council, so that He could not be tried when He appeared in order to it; which was never refused before to any Englishman.

He is found fault with for making use of the King's Name, for Excuse of his Actions done by the King's Command; And yet they are owned by the King Himself in Parliament; and his Lordship must either say nothing, or tell a Lie to make any other Excuse.

Lastly, He hath not only the King's Pardon, but with a Publick Declaration in Parliament, both of his Innocency, and that his Majesty will grant his Pardon Ten times over if this be defective, either in Matter

or Form ; and it is known that his Crimes do not amount to *Treason*, altho' every Article of his Charge were proved against him: And yet this Lord remains still a Prisoner, and under the same Restraint with the Popish Lords in the *Tower*.

Upon the whole Matter, I can make but one Conclusion, which I am sorry is so remarkable in this Nation, That, *Innocence is no Protection to Prince, nor Subject*. We have seen a sad Example of the first in our Age, with the same Engine of *Papery* used for his Destruction, who was the greatest Martyr for Protestant Religion: And I think this Lord's Case an Instance of as great Severity, with so little Cause for it, as was ever heard of in this Kingdom, or any other: But as it hath pleased God to let him suffer under so many contradicting Circumstances, so I hope He will as miraculously deliver Him, not only from His Imprisonment ; but He will so open the Eyes of all good People, as to make them sensible of those Unjust Calumnies they have undeservedly laid upon a Man so Faithful to his King, his Country, and the Protestant Religion. And you are a Person of so great Honour, that I doubt not but you will endeavour to do it in that Station wherein you are so deservedly trusted by your Country.

N. B. In

N. B. In Page the 72d of his Lordship's Letters, (lately Publish'd) may be seen a true Copy of the Letter (herein mentioned) written to Mr. Montagu, March the 25th, 1678, O. S. Sign'd with the King's own Hand; & likewise the Perfect Copies of Mr. Montagu's Letters to his Lordship.

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An

*An Examination of the Earl
of DANBY's Case.*

Written in the Year 1680.

TH O' I have little Curiosity to read the Pamphlets that swarm at this Time, and think it almost as great an Error to mix with the Crowd of Writers, as to mingle with any other Riot; yet I was drawn from my own Inclinations, by so specious a Title, as, *An Impartial State of the Case of the Earl of DANBY*; having been conversant in many Affairs that relate to that Lord.

At the first Reading of it, I was not a little surpriz'd to find, (as I then thought) a Thing publish'd with such a Title, and confirmed with such confident Promises of Truth, and yet to be composed of Three Things so far from Impartiality.

The

The First is the manner of Arguing, which is most upon Questions begg'd.

The Second is, of many Untruths, which I presume were easy to make appear by Matter of Fact.

The Third is, an Endeavour to fix upon the King, most of the Errors and Crimes that were Charged on him.

Yet with this first Notion I was not satisfy'd, but read it more carefully the Second Time; and being then convinced it was subject to these Errors, I thought it my Duty to my King and Country, to let them not be ignorant of any Information that I could give; since some particular Knowledge that I am furnish'd withal, makes me more capable to present them with some Observations, than others, tho' of greater Abilities than I, cou'd have done.

I therefore apply'd my self to Examine this sharp Censure upon the Parliament, for so ill Rewarding the Merits of this Deserving Lord, as *to let Malice have too great a share in his Prosecution*: And in the same Place there is an Assurance, that nothing should be related, but what may be depended upon for Truth.

Who the Author of this is, I cannot tell; but if it were not the Lord himself, 'tis a Friend more passionate than usual, and one that gives him so large a Character, and in

whose Cause he condemns both King and Country; that it seems hardly credible, that one Man should be so extravagantly kind for another, but rather the Production of Self-Interest and Conceit: And comparing the Stile and Arguments with this Lord's Speech in the House of Peers when he was Charg'd, it helps to confirm my Opinion, That this Lord was the Friend that writ it; and 'tis more probable, that he is so much a Friend to himself, than that any other should be so to him.

I shall now proceed to particular Remarks, and begin with the first Matter of Fact; *The Faithful Discharge* of this Lord's Trust as Treasurer of the Navy, to the *Satisfaction of His Majesty, and the great content of the Segmen.*

'Tis fit to observe, That this Office depends on the Directions of the Commissioners of the Navy what to pay, and on the Lord Treasurer, or Commissioners of the Treasury, for Money to pay; so that if this Lord gave content, it seems he was suppli- ed to make himself capable of the Performance. But his Impartial Friend attributes all this to his Lordship, as he does other Things to his Management with so much *Prudence and Success.*

But yet it will appear, he has but Ill-luck in his first Assertions; for since the Treas-
ury

fury of the Navy is so confin'd, the great Trust that remains in him, is only in Sums of Money, which can be violated by no Ways, but falsely disposing it, or applying some to his own private Use; the last of which has been counted a High Crime; for the King's Treasures have ever been taken to be *Sacra Patrimonia*, and none were to use any of it, but were liable to great Punishments.

But this Lord ventur'd to apply Two thousand seven hundred Forty seven Pounds Five Shillings and Elevenpence, of the King's Mony, to his own Use; and was short so much in his Account for his *Faithful Discharge of Treasurer of the Navy*: And was forgiven it by a Privy-Seal, bearing Date the 21st of February, 1676, which was about Three Years after he was Lord Treasurer. A seasonable Time to pass such an Account, to be forgiven for some Money, when he had gotten the Command of all the Rest: But I shall not dispute whether this Fault hinder'd His Majesty from being satisfy'd with his Performance in that Employment, since His Bounty and Goodness was in other Things much more extended to this Lord; but how well returned, will appear by the following Observations.

After this Stumble in the Threshold, he proceeds to his Advancement in 73. to the Place of Lord Treasurer; which, he says, he managed with so great *Prudence and Success, that contrary to all Men's Expectations, but especially of his Enemies, (who assured themselves of his immediate Ruin by that Preferment)* he supported for near six Years that Condition of his Master, which it was not then thought could have been made to subsist for so many Months, without any Supplies or Burthens laid upon the People in all his Time.

Here his Impartial Friend begins boldly to assert, and as confidently to beg the Question; That this Lord supported the King's Condition for six Years, that was thought could not have been made subsist six Months. I believe 'twould puzzle the Author to name the Persons that were of this Opinion; for they could find no Subject-matter for their Judgment, but must be guided by Flattery or Ignorance. And 'twere very uncharitable, if not malicious, to believe, that those that managed the Revenue before this Lord, should be so weak and dishonest (for less than such a Conjunction, could not reduce such a Revenue to so deplorable a Condition) as to give any a just Ground to believe they had not left a Subsistence for six Months.

This

This heavy Charge on his Predecessors, seems not only very partial, but very extravagant; which will be best discerned, by examining the great *Success* and *Prudence* of this Lord; and perhaps it will appear, that Men should rather have judg'd, and his Enemies have apprehended, that the King's Revenue was left in such a Condition to this Lord, that it might easily have been supported for much a longer time than six Years; and if any Calculation was made for his Ruin, it must have been from other Causes.

As to that of Supplies, it is very true, that there were none given directly to the King's sole Use in his Time. But the Eighteen Months Tax for 1238750 l. which was given in the Lord *Clifford's* Time, was all paid in this Lord's; half of which, viz. the last Three Quarters, was solely disposed by him, and the first Three by the Lord *Clifford*, for Publick Uses; which contributed to leave the King's Condition in a better Posture than is here acknowledged; which will be shewn in a more proper Place, when I set down the State of the King's Condition, in point of his Revenue, as it was left by his Predecessor the Lord *Clifford*.

At the same Time I will present how this Lord left it; by which every reasonable

ble Man will be best convinc'd. Yet before I plainly set them down, I will beg leave to take notice of some Particulars, which perhaps may be useful to the Consideration of the Generals.

The first Illustration of this Lord's Prudence, is drawn from the Chargeable War with the *Dutch*, the whole Burthen of which, this Impartial Friend would lay upon this Lord to discharge; forgetting, or resolving to forget all but his Concerns; and that the War was begun in the Time of the Commissioners, and the great Charge of it was in the Time of the Lord *Clifford*, who might as well complain, that he had no Benefit of any Tax given in his Time, as this Lord, that there was none given in his.

But that I may not say more than I can clear, nor desire to be believed only from confident Affirmations, I must acknowledge that I have seen the Disposition of the three first Quarters of the Tax: The first was made the Third of *April*, 1673, which was not Three Months before the Lord *Clifford* resign'd his Staff; the Second also was signed by the Lord *Clifford*; the Third Quarter was projected by the Lord *Clifford* with this Lord, then Sir *Thomas Osborne*; whose Name I have seen to the bottom of the List, being so entered at the
Exchequer;

Exchequer : The other Three Quarters were not medled with, but left wholly to the Disposition of this Lord ; in whose Time also, all these six were paid. Concerning other Taxes and Monies, I shall give the Account in a more proper Place ; and only add this Observation, That all Assignments upon this Tax, ever found Credit for the Advancing of Money ; and this Burthen of the *Dutch War* did not lie so wholly upon this Lord, nor was the Tax so unuseful to him in Discharging of his Part of it.

I will not unnecessarily dwell upon Particulars, as, what Arrears were upon several Offices ; the General States when laid down will best Answer that : But I will only touch upon some others that will not relate to that, whereby every thing may have its just Examination.

One great Particular applied to the Honour of this Lord, and to the Infamy of others, is the settling the Debt to the Goldsmiths ; which yet is not a Debt Paid, but the Settling of a perpetual Interest to be paid. I will not deny but 'twas a just and good Action ; nay, tho' Mr. Coleman claims a Share in it, whose Benefit perhaps only made him Active in it.

But upon this Occasion, I would only present a small View of the Impartiality of this Writer ; he calls this Stop of the *Exchequer*

chequer an infamous Action, and fixes it upon many Persons, allowing no Excuse for them; tho' it was owned by the King in a Publick Declaration, by reason of the Necessity of Affairs; but when this Lord was charged with Crimes of higher Natures, he allows the Plea, that the King commanded it; and tho' privately, to be sufficient to wipe off all Infamy from him. This cannot appear good Reason, or clear Justice, and less shewed towards the King than any. If this Lord be charged with an ill Action, it must be fixed on the King; and if a good One be to be claimed, 'tis wholly applied to this Lord's Honour; and the King must be allowed no Share of his own Goodness.

The next Particulars he uses to help shew what great Things this Lord performed, is, the War of *Algiers*, and the Rebellion in *Virginia*: The last quickly ceas'd; and while both hapned, if there had been a considerable Fleet for Summer and Winter Guards kept out besides, it had been a matter of some Consideration; otherwise the sparing of those, was more considerable than the paying for these.

Other more slight Particulars are set forth in the next Paragraph; the great Abatement of the Corn-Act, to the diminishing the Customs Threescore thousand Pounds a Year:

Year: The Act for Prohibiting the *French* Commodities, which has lost not less than One hundred and Fifty thousand Pounds a Year from the said Revenue; which this Lord's Predecessors did receive Yearly into the Exchequer. What these Acts might lessen from what the Customs might have been, none can well guess; but one thing will confute the Argument, viz. *That there was more paid in his Predecessors Times*; for let any take a Medium of the Time of this Lord's being Lord Treasurer, and 'twill appear, the Customs never yielded so much as in his Days.

The next Complaint is, the 200000 *l.* borrowed on the Fifth Part of the Excise, and the inconvenient Manner of Re-paying it. This I confess is hard to be understood: For in some measure this Money was of Use, not of Disadvantage to this Lord; for the full 200000 *l.* was lent in his Time; and at his going out, on the 25th of *March*, 1679, 83400 *l.* was left to pay, which since was paid by these present Commissioners; so that of Consequence that Sum was used in the Assistance of his Management, and not the whole any Burthen, to make the Work so much the harder for his Prudence and Success.

The next Paragraph sets forth this Lord's Care to be very great, to see Money applied to
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the most Publick Uses, as will appear by the weekly Certificates in the Exchequer, (to which he appeals) and from which Publick Uses he never diverted one Penny that was so appropriated, (notwithstanding the many false Suggestions to the contrary, &c.)

This dark Text needs a Commentary. First, as to the Weekly Certificates of the Exchequer: 'Tis to be observed, that they do indeed give an Account of all Appropriated Moneys; but by the way, lest it should be taken for granted it does so of all other Moneys, 'tis fit to let it be understood, that tho' it should and ought to do so, yet this Lord caused many Sums of Money to be paid by his private Direction, and never cognizable in the Exchequer, which the Commissioners of the Excise cannot deny; and Mr. Bertie, or a private Letter, the Voucher for their being plac'd and allow'd to their Account. That he never diverted any appropriated Money (he means, I suppose, by Acts of Parliament) is very true; but 'tis as true, that he could not have done it, if he had the Inclination to have attempted it; for his Warrant or Directions would have met with no Obedience in the Exchequer; for the Auditor would not have directed Moneys, nor the Tellers have paid it to a Wrong Voucher; which renders not the Exchequer a proper
Way

Way for private Dispositions of Money ; for there no Lord Treasurer can be obey'd against an Act of Parliament expressly directing, nor in any thing that is derived solely from his own Authority : But yet where this Lord had Power to divert, he has not been scrupulous to use it ; for when Money was lent on the Credit of the Fifth Part of the Excise, he hindered it from coming in ; (which was often complained of publicly at the Exchequer by the Lenders of the Money) and diverted it to other Uses : Nor can the late Commissioners of the Excise deny this ; if they should, the Lenders will prove it, who daily solicited them to bring it in.

A Second Instance is in the Poll-Bill, which was given for an actual War with France, upon which many *Eastland* Merchants were promised Payment for Hemp and Masts, and other Furniture for Ships, which were taken up of them ; but no Care taken to reserve Money for them out of the Act, but are now before the present Lords Commissioners, who are contriving Securities, or Payments for them ; so that it seems this Lord observed just Rules where he could not violate them, and broke them where he had Power or Opportunity.

In

In the same Paragraph this Lord's Industry is set forth, in the Improving the King's Revenue: But this was not peculiar Industry in this Lord that was unprecedented, for the Customs were once let for 300000 *l.* per Annum, and improved to 600000 *l.* just before his Time; and the Excise was likewise improved; but this is more the Industry of private Men, than of a Treasurer; for by their Desire of Gain, they bid upon one another; which a Treasurer must receive, or put out the Candle they bid by; as they say was done in the Case of Mr. George Pitt, and Mr. Bratt, &c.

Not was the Art new which he there bragg'd of, to break a Bargain, and resume the Favour of the Excise for the King's Advantage; for the Lord Clifford made him a President for the like Trick, by Resuming the Farm of the Customs, which he had let to Sir William Bicknall, and others, for 600000 *l.* per Annum; so that I can neither say the Art is New or Good.

Lastly, if this Lord so improved the Revenue, he has also improved the Argument against himself, if he has not used it with that Success and Prudence which is so boasted of in the beginning.

For the Revenue of Ireland, I can say little to it; only the Charge that my Lord Ranelagh lies under, and the Protection al-
ways

ways shew'd in keeping that Business from a strict Examination, does not seem to make out any Advantage that the King has found by the Disposition of that Farm.

The next Honour that is attributed to this Lord, is, that he paid rarely more than Eight per Cent. for Money borrowed, notwithstanding the shakes lately given to Credits, &c.

I hope this knowing Man in the Exchequer, would not for Proof appeal to the Weekly Certificates for this; if he does, he will find nothing there of the Payment of any such Interest at all; for this Lord practis'd most upon Tallies of Anticipation, the Way that has been the great Destroyer of the Revenue; which is done by a fictitious Bill thrown down by a Teller for Money, when really he has it not, and he discharged by a Tally instead of an Issue; which Issue is removed from being vouch'd by Record in the Exchequer; so that when 'tis paid, or when the Interest is paid, or what Interest is paid, never appears there; so that all the Vouching lies among those that deal in the Money; and if they can but agree well, there is no Fence against their Combinations. This I set down as briefly as I can, only to shew, that this Lord could not know what Interest he paid, tho' he might know what he

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agreed

agreed for: For if a Tally is to be paid a Year after, the Interest may commence with the Date of the Tally, if they be but pleased to agree; and when the Farmers or Contractors of the Excise have advanced great Sums, the Commissioners have by their Acquittances given Vouchers instead of Records, for the Commencement of the Interest; and I have heard, (nor is it improbable) that they were all very well acquainted.

The next Paragraph is of greater Moment, Answering the Scandal that the Revenue has been squandered under the Name of Secret Service; and upon this shews from the Certificates of the Pells, that there has been accounted from Easter 73, to March 79, Eight Millions sixty two hundred Seventy six thousand Seven hundred Sixty seven Pounds, besides the Interest of the Goldsmiths, and divers other Particulars which are not included in that Account; and then desires it may be computed what could possibly remain to have been laid out extravagantly, and 'twould appear a very inconsiderable Sum.

First, 'tis to be observed, That 'tis confess'd there are divers Particulars which are not included in that Account of the Exchequer; but the Argument that is here offer'd, is drawn from the Comparison of what

what that Account is, and what the Revenue may amount to in that Time; which infers, that only the Revenue is brought to that Account; but since he desires a Computation, I will furnish him with one more Particular than perhaps he desires; and then (the Vail being pull'd off) this Fallacy, among others, will be discover'd.

First, The Revenue in that Time; may indeed amount to about that Sum; but in the Account of the great Sum he sets down, there are these Particulars contain'd, viz.

The 18 Months Tax, amounting to 1238750
 The Tax for Building the 30 Ships, 984978
 On the Fifth Part of Excise, 200000
 The Poll-Act, 252900
 The first Act for Disbanding the Army, and other Uses, 619388

This had appear'd an Argument of some Moment, if it had been stated upon the Account wholly of the Revenue, and that it had been left uncharged by this Lord: But without searching into the Fallacies of it, the Condition of the Revenue, as it was left by this Lord, will best determine his Prudence and Success.

The next Thing insist'd on, is Secret Service, which he says, those that are ver-

sed in the Exchequer know, that many Sums are included in that way of Payments, that are either for Publick Service upon Expedition for sudden Occasions; or to save greater Fees, where His Majesty is pleased to let it be so; as in the Case of the Lord Treasurer and Chancellor of the Exchequer Salaries, &c.

This is a Compound of Mistakes: For there are none in the Exchequer that can know what any Secret Service Money is applied to; for the Orders are in a us'd Name, and no Service mentioned; but the Words betray themselves: For if it be for saving of great Fees, 'tis of Consequence that the Exchequer knows not what 'tis for, or else they would have their Fees accordingly; but for this very Cause, because those that were versed in the Exchequer did not nor could not know what such Monies were for; the passing of such Orders was stopt by the Officers, till the certain Fees were agreed; for otherwise they took it as Free Gift; and rather than it should be known what it was for, a Proportion of Fees were consented to. But the particular Instance of saving the Lord Treasurers and Chancellors of the Exchequer's Fees on their Salaries, by this way, is yet more unlucky; since if the Author had been at all versed in the Exchequer, he would have known that there was never any Fees de-

manded

manded or taken for those Salaries (tho' the Orders came in their Names, and the Payment express'd,) since the Exchequer had a being; and this very Lord's Pension of 8000 *l. per Annum*, was never included in Secret Service, and yet paid without Fees.

As for the Sum paid, as I remember, 'twas deliver'd in Parliament to be 252467 *l.* paid in Two Years and about Three Months; upon which I shall only say, that it was much more than was used in all the Time before: And since he says that one Third at least, if not Half the Payments for Secret Service, might be exposed to view as well as other Payments; I cannot dispute it, but only wish they had either been so exposed, or else not so paid, that those Jealousies of ill-disposing Moneys, and corrupting Members of Parliament, had not so much prejudiced the King's Affairs.

As to the way of Arguing, That this private Account is better than what was formerly contrived: It is not my Design to dispute upon the Comparisons of ill Things, but leave every Thing to be considered abstractedly, and to bear its own proper Weight; but without Question, the Issuing of the King's Money ought to be Publick, and the Occasion intelligible on the Records;

70 MEMOIRS, &c.

unless the Privy-Purse, for which none sure would grudge a plentiful Provision; and no just Bounty or Reward ought to be concealed; 'tis just and honourable for a King to bestow; but not for others to have the secret Power; nor can any thing be more inconvenient, than too great Opportunities of Power given to any Subject; it breeds and nourishes Temptation in him, and Suspicion in others; and what Two greater Rocks can a King govern between, than too much Power in One, and the Jealousy of that in all Others?

I will instance one Particular that shew'd a Subject for these Two, and 'twill be easy to judge, how immodestly Power was used, and what just Jealousies it must give; it far exceeded this way of Secret Service; for a whole Branch of the King's Revenue, and no less than the Excise, was endeavour'd to be brought under the sole Disposing of this Lord, out of all due Course of Common-Law, (for so the Method of the Exchequer is taken to be) by a particular Patent under the Broad Seal; wherein an Office of a general Cashier was erected, and one Mr. *Kear* put in, which Project the Patent says was seriously examined by the Lord Treasurer, and the Chancellor of the Exchequer, &c.

of the Earl of DANBY. 41

The Chancellor of the Exchequer was then Sir John Dinecourt, who utterly re-nounced the Knowledge of it, and thought it a Patent of a most dangerous Consequence; besides, in the same Patent, when it comes to the Disposition of the Money, it leaves out the Chancellor of the Exchequer; and says, it shall be paid into the Exchequer, or in such other manner as the Lord Treasurer shall think fit. These are the very Words; and 'tis probable, if that the Chancellor of the Exchequer had approved this and some other Things, he had not been removed from an Employment which he performed with so much Uprightness.

This Patent was questioned in Parliament; and being of so Infamous a Nature, and a Question accordingly form'd, *That this Patent is Illegal, and of dangerous Consequence*; this Lord found such open Friends, (perhaps by Secret Service) that tho' they granted themselves 'twas an ill Patent, yet for fear it should be part of the Charge made good against this Lord, and not yet being so hardy as to give their Negatives, found out an Invention to avoid the sure Blow, by the Orders of the House, which give a Freedom for any to move for the adding or taking away any Words to the stated Question; upon which Privilege they mov'd and seconded one another with private

Zeal in this Publick Cause, to leave these Words out of the Question, *viz. Illegal, and of dangerous Consequence*; which they carried in the Affirmative; and then the Question only remained,

This Patent is—

'Tis easy by this to judge, what Power an Ambitious Man may aim at; and what Jealousies, Excess of Power in a Subject may justly give; since it could thus operate upon the Major Part of a House of Commons, and leave such an incomparable Question upon their Books.

I have dwelt too long perhaps upon these Particulars, from which I confess no demonstrative Argument of the Whole is to be fram'd; but I thought it fit to shew what Artifice lay hid under every specious Particular, and how little the Promise was performed of relating nothing but Truth. What Excuse the Author would make, I cannot guess; unless that he was unfortunate to chuse such a Subject to defend, that always gave great Suspicions to be inseparable from the contrary.

I will now give a plain Account of the Generals, which must be the sure Proof of all; First, as to the Condition of the Revenue, how it was left by the Lord Clifford; of which I have procured a Copy truly written from the Original Paper, under Sir Philip Floyd's Hand.

C O.

COPY.

June 10. 1673.

THe Customs were charged with about 153000 *l*. for the Navy, Ordnance, &c. and I hope this last Fleet will go near to clear it.

Almost two Thirds of the Rent of the Excise for the Quarter due at Michaelmas next, is charged for the Forces, Cofferer, &c.

All the Forces are provided for till the 25th. of July, and the last new Additional Levies till Michaelmas next.

The Household is provided for till Lady-day last.

The Treasurer of the Chamber till Christmas last, except the old Arrears in the late Lord Treasurer's Time.

The Office of the Works till Lady-day last.

The great Wardrobe hath been supplied from time to time, as their most pressing Occasions have required.

Tangier is Weekly provided for on the Customs.

The Ordnance hath had as much Yearly in proportion, as in the former Dutch War; but by Reason that that Office hath not kept the Ac-

Accounts, I cannot justly say how that Office stands.

The Victualler is paid within a small Matter, except the last Agreement for the Land-men.

The first Three Quarters of the Tax given by the Parliament, are assigned; the three last are un-
 600000 l.
 touches, which amount to about

There will be in October and November, for Payment of the Fleet and Tards, in ready Money, these three following Sums.

From the Advance of the Excise, 150000 l.

From the French Money, 112500

Upon the 3 Quarters of the Subsidy, 80000

342500 l.

The Chimney Money and the Law-Bill are left free, to be Charged as there shall be occasion.

By this it appears that there was 942500 l. left in Money, and the Charge upon the Revenue not 300000 l. For the Excise was left Charged not above 110000 l. when the Lord Clifford went out: And whether this be a Truth, any that doubt it may be resolved by Sir Stephen Fox, or Mr. Richard Kent.

And

of the Earl of DANBY. 75

And to shew also that the Condition of the Customs was truly presented, and the Lord Clifford in his Paper guess'd right, that the Return of the last Fleet would clear it; I have obtained a Copy of a Letter written from Mr. Mounteney, who was then Cashier of the Customs, to Sir Robert Howard, the then Secretary to the Treasury.

C O P Y.

S I R,

I Have a List signed by the Lord Treasurer Clifford, and confirmed by the present Lord Treasurer, the said List being wholly paid, only Eight thousand four hundred Pounds payable to the Treasurer of the Navy. I do hear there are several Tallies struck on the Customs, but I know not of what Value, nor to whom payable. I understand the Persons have made their Applications to my Lord Treasurer, and that my Lord intends to make a new List; which is all I can say to this Affair.

Sir,

Your very humble Servant,

Custom-house, London,
the 10th of Nov. 1673.

Rich. Mounteney.

It

76 MEMOIRS, &c.

It now remains to shew on the other side, the Effect of the great Prudence and Success so boasted of, by as faithfully presenting the State of the Revenue at *Lady-Day 1679*, when this Lord left it. And to be as clear in this as I was in the other, I have obtained likewise a Copy of it, as it was presented to these present Lords Commissioners of the Treasury.

The Charge upon the Three great Branches of the King's Revenue, computed to remain, *Lady-day, 1672.*

Remains unpaid of Tallies charged on the Customs,	435106 01 00
Of Tallies charg'd on the Excise,	550464 15 04
To Repay the Advance,	250000 00 00
The Charge on the Hearth Duty by Tallies and the Advance-Money,	250000 00 00
Total	1485570 16 04

And now the equal Reader is left to judge, (tho' the Impartial Author says he is not) whether this Lord, or the People of England, be most unhappy in his Misfortunes.

But

But to those that will not take the Pains to examine this, and are not convinced there never was a better Officer in this Station, he proposes a new sort of Evidence from *Coffee-houses themselves*, who have complain-
ed of the good Husbandry this Lord used for his Master, for fear it should keep off the use of Parliaments.

I will not wonder at such a Proof, for the Writer uses always great Liberty; but I will only do the same, and desire those Persons also that will not take Pains to examine this, to receive the Evidences now in the *Coffee-houses* for his Lordship's Character, I am almost persuaded, that if Ballads had been sung in his Favour, they would have been urged as Evidences of his Innocency; but I dare not take the Liberty to urge those that are sung on the contrary, for Testimonies of his Guilt; but after such Evidences as *Coffee-houses* introduced, the next may probably be Ballads.

I have now finish'd my Observations on that Part of this Lord's Ministry which belonged to the Treasury, and shall now proceed to State-Affairs, in which other Sphere, (for 'twas not enough to shine in one) the Impartial Author presents him as great a Minister as he has done a Treasurer; concluding as he began, *That what he had said concerning this Lord's Administration in his Office*

Office as Lord High Treasurer, he spoke upon certain Knowledge; and what he shall say in relation to his Transactions in the Affairs of State, are partly so, and the rest upon such Assurances, that he is no less confident of the Truth of them.

Thus he tells us, That he builds upon some Assurances by him received, as firmly as on his own certain Knowledge. This I suppose he might do, without any Compliment to those from whom he received them; for by the Examinations of all compared, will I suppose appear, their Credits ought to have no Preheminence.

He first introduces his Discourse with a Complaint he heard this Lord make, That it was an infinite Misfortune to him, that His Majesty did take him so much from the Business of the Treasury, whereby he could not make those Improvements in his Revenue, and give those Dispatches that were necessary; and express'd his Regret that he was employed in any other Business than the Treasury.

As to the improving of the Revenue, it has been discours'd already; but for Dispatches, I suppose he did not believe much time was necessary; if it be true, as I have heard, That he endeavoured to gain a Belief in His Majesty, that no Man could be a good Treasurer that was ease of Access.

As for that Regret this Lord had, for the Increase of Business, and consequently Power in the King's Affairs, I shall only make some Observations upon this Lord's Temper and Proceedings; which will shew, he rather desired to engross all Affairs, than share any. The assurance of a modest and confin'd Nature would have best appeared, by the easy and friendly carrying on the King's Business, with such Ministers and Officers as were of good Repute: But instead of that, this Lord shewed a Temper of a contrary Nature, by attempting the Removal of every one that was not prostrate enough to him. He began with Sir John Duncumb, and Sir Stephen Fox, Men of most unquestioned Worth in their Employments: Then brought a Charge in the Council against Sir Robert Howard, Auditor of the Receipt, the Success of which is publicly known, and might questionless have been very well guessed by this Lord; but there were two great Causes that blinded his Reason; his Son the Lord Dunblain had the Reversion of the Auditor's Place, and the Removal of him with the others, had reduced the Exchequer into his uncontradicted Power.

The Ministers in State Affairs, (that did not submit implicitly,) found him not less ambitious. My Lord Arlington, and Mr. Secreta-

Secretary Coventry, seemed to have Writs of Ease in Foreign Affairs, and very often were Reports and Expectations of their leaving their Places; and those that were upon better Terms with him, were Obeyers of his Power, and not Sharers in any. And I am confident, whoever thoroughly examines this Lord's Temper and Carriage amongst Men and Business, he will hardly conclude it probable, that any Regret could spring from his Increase of Power; rather the Character of a very great Man may be applicable to him, as to our Part of the World.

Astuat infelix angusto limite Regni. Juv.
Sat. 10.

The Reasons why this Lord entered unwillingly into Foreign Transactions, was, because he always shew'd himself averse to the Counsels wherein he found His Majesty engaged; and reckons up, The Breach of the Tripple League, a War with the Dutch, a League with France, and an Army of English then in France.

These Particulars will not concern my Observations; if any did amiss, let it be examined when there is such an Impartial Account as this pretended to be given; but upon this depends the following Paragraph, which

which ought not to be let pass without some Reflections.

He complains there, that the Nation was too hasty, and did not give this Lord time to reduce things in such a Posture as might be wish'd; and makes a Query, Whether it be not the most unsafe, as well as most unjust Practice, for a Nation to discourage such Ministers, as endeavour to draw their Master to his Kingdom's Interest.

Here the Impartial Author lays the Foundation of his ensuing Arguments; and resolving to charge this Lord's Crimes on the King, he first boldly attempts to make him a fit Subject to bear it; and to lessen his own Impeachment, draws up one against his Sovereign, That He had forsaken the Interest of his Kingdom, and wanted this Lord to draw him to it.

With this Gratitude, he seldom fails to pay his Majesty in every Particular; and having declar'd what a profest Enemy this Lord was to the French Interest, believing it destructive to this Nation, he desires,

That the Proceedings of this Lord may be impartially consider- Page 18.
ed, and see whether they have not all tended to the Diminishing the French Interest since his time; and if it have diminish'd, it will be hard to find who else there was, besides him-
G self

self, near his Majesty, who had Power and Inclination to do it, &c.

The Issue then to be joyn'd, is upon the Question begg'd, Whether the *French* Interest was diminish'd by this Lord's Proceedings; but it will easily be granted, that 'twould be hard to find any near his Majesty, besides himself, that had Power: And then I hope if it appears that the *French* Interest grew enlarg'd in his Days, 'tis as reasonable to apply his Power and Inclination to be the Causes of it, as it is for his impartial Friend to use them for the contrary.

I will pass over some Instances he gives, which cannot amount to the Proof of the Whole; as, the breaking the League with *France*, Peace made with the *Dutch*, the Duke of *Monmouth* call'd from the *French* Service, the Match with the Prince of *Orange*: All which are attributed to this Lord, as the Custom is of any reputed Good. At which I will not quarrel, because I have yielded the Point, that he had all Power; but I will only put him in mind of the Address from Parliament to the King to recal the Forces from *France*, and the Bills pass'd in several Sessions to that purpose, even in those Years when the *French* so clearly ow'd Success to the *English*. And the Marriage of the Lady *Mary*, unless the

Consequences had been happier, might rather be thought the Disposer of the Prince of *Orange* to the Peace that follow'd, than be a Prejudice, to the Interest of *France*, which prosper'd most after it.

In the same Paragraph, 'tis said, That every one knows that this Match altered the Minds of the Duke of *Tork* and Duke of *Monmouth*, that from being the greatest Asserters of the *French* Interest, they became as forward as any for the War of *France*.

And this Conversion, it seems, assisted by the *Power* and *Inclination* of this Lord, brought on the Actual War with *France*, for which the Parliament gave their Money; and by this we see it own'd, that all were *French* but this Lord; and People not so mistaken, it seems, that have been constantly jealous of it. But whether the Dukes of *Tork* and *Monmouth* have reason to thank him for declaring their Conversions, I know not; since he condemns them for an Error which we found ill Effects of; but none on the contrary by the Conversion: And then he says, the King had good Intentions, &c. which implies, that he never had any good before; as if he had *now* drawn him to his Kingdoms Interest. And as this Lord was pleas'd to order it, he never appears to have better after it: For whatever he is accus'd of, he charges upon the

*Vid. His Speech
in the House of Lords
at his Charge.*

King, and acts as if agreed with what he pretended to know of the Opinion of the *French*, that they had the King's Person and Government in the last Degree of Contempt.

I know not whether that Lord thrunk, when he spoke those Words in the House of Peers; but next the owning of such an Opinion of the King, 'twas an audacious Crime to own a Belief that any could retain such a Judgment of him. I hope this Lord is the only Person that thinks it either probable or possible.

But leaving this Point, with Blushes to have repeated such a Thing, I will set down some general Observations of Publick Affairs, which will best shew whether the Diminution or Increase of the *French* Interest, was likely to be intended or effected in his Time.

In the first Place, to lay a Foundation to build upon, I suppose it may be taken for granted, that the Parliament did ever appear warmly averse to that Interest; and of Consequence, must give the greatest Apprehensions to the *French*, that from them might proceed the only Fatal Opposition, and which was not probably to be diverted either by Skill or Money.

In

In *March* 76, the Commons in Parliament presented an Address most humbly offering to his Majesty's Consideration, That the Minds of his People were disquieted with the manifest Dangers arising by the Growth and Power of the *French King*, &c. And therefore humbly presented their Desires, that his Majesty would strengthen Himself with stricter Alliances, to quiet the Minds of his People, and preserve the *Netherlands*. The King's Answer agreed, That the Preservation of *Flanders* was of great Consequence. But it seems, not being thought Particular enough, it begot a Second Address, on *March* the 26th, wherein they again more strictly press'd the King to enter into such Alliances as might obtain those Ends. And in Case, that in pursuance of such Alliances, his Majesty should be engaged in a War with the *French King*, they promise chearfully, upon notice of it in Parliament, so to supply the King, as that he might prosecute the same with Success. And in their Address of the 29th of *Jan.* 77, they humbly desired no Treaty, but such a one as might put the *French King* in no better an Estate than he was after the *Pyrenean Treaty*.

This sufficiently shew'd the Temper of the Parliament, and their Judgment, That War it self was more suitable to the Interest of *England*, than the Growth of the

French Power. But this begot great Debates, and shew'd so many influenc'd, that they appear'd ill Witnesses for the boasted *Power* and *Inclination*; and presently after, while Things of this great Nature here had heavy Motions the Frontier Towns were taken, as *Valenciennes*, and *St. Omers*, &c.

I will not delay, to set down the Particular Reasons and Arguments that were rais'd against this constant Sense of the Parliament; nor the sharp Reprehensions they sometimes received from the Notions of their too-much invading the King's sole Power in Peace and War. It shall suffice to observe, That those Reprehensions, Arguments, and Delays, did not seem to tend to the Diminution of the *French* Interest.

But to proceed: To make it yet more clear, that the Growth of the *French* Interest and Power was nourish'd in the Time of this Lord's Power and Inclination, let it be fairly Examined what Proceedings here could most favour their growing Interest.

I will presume then to assert, That nothing could contribute more to it, than all Means used to hinder the Parliaments engaging the King according to their Judgment: And probably since it appeared, that notwithstanding all Opposition by Debates, and Displeasure shew'd to some of the

Addresses, they rather grow more warm than cooler in the Pursuit; what was left, but frequent Prorogations and Adjournments, to divert the Weighty Stream of the Parliament from running with unresistible Violence against the *French* Interest?

Mr. Coleman was of this Opinion, as plainly appears in his long Letter; Where he says, That it was their Dependancy on the Parliament, that encouraged the Confederates to continue the War; and that *their Dissolution would break all their measures*: And there says, That the good Father he writ to before, so concurred in his Politicks, that he assured him the King of France would assist it with his Power and Purse. And a little after gives an Account of the useful Prorogation to the 13th of April, being to a Day so high in the Spring, that the thrifty Monsieur Ruwigny thought, would put the Confederates beyond their Measures. Coleman's Trial, pag. 40.

And it appears, this Lord concurr'd also in their Politicks, that a Prorogation or Adjournment was ever a help at a Pinch; for in his Letter to Mr. Montagu, dated the 17th of Jan. 76, he says, That the principal Cause of the Adjournment for Thirteen Days, was to see if an Expedient for Peace might be found in that time; and the Effect of the Adjournment hath hitherto been, that

88 MEMOIRS, &c.

no body will believe other than that the Peace is already concluded between us and France.

I will not here set down the frequent Adjournments and Promissions that were made, but only observe, they kept pace with the Success of the French, and were most frequent when they were most prosperous; and that this hapned in the Years 77, and 78. when the Power and Inclination was boasted of; and in the same Years the French grew so enlarged with Success, that it is improbable any, but the concerned Party, should immediately affirm, that this Lord's proceedings tended to the diminishing the French Interest in his time.

Since then the contrary so clearly appears, That in this Lord's time the French Interest grew so enlarged; I hope it will seem more proper to give the Words their true Application, and to say, If it thus increas'd, it will be hard to find who else there was near His Majesty, who had Power and Inclination to do it.

I come now to the last great Particular of this Lord's Proceedings towards the diminishing the French Interest, viz. The Letter which was produced to the House of Commons, and hastned, or rather necessitated, by this Lord's Power and Inclination; for 'twere hard to find any other about His Majesty, that could or would have endeavoured to have Mr.

Mon-

Montagu's Cabiness so violently seized, and had he believed, as his Impartial Friend affirms, That the Letter might justly have born a wise and useful Construction both to the King and Kingdom, he would not by so unusual a Violence have implied a Guilt in his own Opinion, which is confirmed by that Secrecy he enjoins the Ambassador to use in the Negotiation, for Fear of giving Offence at Home.

I will here continue my Method, not to delay upon arguing Particulars and Circumstances, where the right Judgment must be drawn from the General, which is the Subject Matter it self; as, that Mr. Montagu confesses great Honour in this Lord; and that by a Letter to the King, himself says, That the Earl of Danby might have had more than ever he got by being Lord Treasurer, if he would have prevailed with the King to agree to the Propositions of the French King; and a little after cries, *That if the Ministers intended the setting up an Arbitrary Power at Home, they would certainly neither have disoblighed the French King, as they have done, nor refused his Money.*

What Character Mr. Mountagu gives this Lord in former Letters, or what Opinion the French had of him, was only liable to a Reflection made by a Member of the House of Commons, when the Letters were read,
That

90 MEMOIRS, &c.

That if the *French* had an Apprehension that this Lord was not once their Friend, he was confident his own Letters shewed, that they had Reason now to have a kinder Opinion of him. What the Letter to the King himself was, how my Lord of *Danby* might have got Money, we know not; but it appears by his Letter now, that Money would have been accepted: But for the last Assertion, That the Ministers had disoblighd the *French*, needs no Confirmation, but what has been said of the whole Course of Things; which I fear they will never be so just to repay *England* by Counsels, as weak as those which so much contributed to their Successes.

From these Arguments he concludes, That it would puzzle the most uncharitable Censurer to find another Cause than their Unwillingness to enslave their Country, why Money from the *French* was refused.

If this be a good Consequence, That to accept *French* Money is to enslave the Nation; I hope it follows, that the Sum of Six Millions of Livres yearly, to be paid for Three Years, and offered to be accepted, was for the same Purpose.

The last Evidences, instead of Coffee-houses, is now offered from *Gazettes*, and the Dutcheffs of *Mazarine's* Lodgings; the first declares the Ill-will the *French* had for this

this Lord; and the other being a Place where the present *French* Ambassador [is apt to speak more freely] he used such Discourses as would convince any Man, &c.

If the *French* Gazettes gave such an Account of him, 'tis answered as the other was, That they had no such Occasion now: And for the other Proof, I have heard that the Dutcheſs of *Mazarine's* Chamber has been more used to the free Discourses of the Confederate Ministers, than the *French* Ambassadors. But among these weighty Arguments and Evidences, I wonder 'tis omitted, that this Lord drunk a Confusion to the *French*, at the late Bishop of *Canterbury's* House at Dinner; and I think it as full and cogent as most of the others.

But I am now brought close to the Matter, by being desired to observe Four Things.

First, That the Propositions sent, was only a Copy of what Mr. Montagu was to receive from the Secretary; so that the Thing it self was no Secret to them.

This Argument seems very strange, because the Secretaries knew of the Propositions for the Peace; which was likewise known to the Foreign Ministers: Ergo, the treating for so much Money for Three Years, to beget a right Temper in Parliaments, was no Secret to them neither, tho' enjoin'd

enjoy'd to be so, especially to the Secretary: The Logick would be as good, to conclude, That he that knows something, knows all Things.

In that Letter also, 'tis fit to observe, that the King was sufficiently inform'd, that the French desired Peace upon the Terms sent by the Secretary; but thinks it not fit to stay till the Desire was formally receiv'd, and the Ambassador as formally empower'd to propose, for fear the Time should be lost of Effecting the Peace; that is, for fear the Market should be miss'd of Contracting for so much Money, as might secure against the Troubles of Parliaments for some Years. And if Adjournments and Prorogations have been the usual Prudence, certainly a well-bought Dissolution (for Three Years at least) must needs be thought admirable Politicks.

The Second is, That the Propositions were not originally the King's, but the Confederates: so that the King was to gain nothing by making the Market either higher or lower: and the French had often Experience that his Majesty would not do otherways.

This Second Way of Arguing, is as strenuous as the former, and bears equal Resemblance to the Reason and Nature of it; for 'tis still grounded upon the Propositions, That they were originally the Confederates;

derates; who at that Time were too much discourag'd to hope or propose any Thing equal to the Common Interest: And therefore the Market was to be made up in the preventing that which might raise their Spirits, the Meeting of Parliaments. Which Mr. Coleman (whose Policy agreed with this Lord's) declares to be the Fountain of their Resolutions. So that the Logick appears this:

There was no Markets to be made of the Propositions:

Ergo, there was no Market to be made of Parliaments.

The Third continues in the same Method; which is laid down as a full Justification of his Majesty's Honour in that Point, and that he had no Design of getting the Money for the Purposes suggested against the Earl of *Danby*; for in that Case, he would not have considered the Gain or Loss of the Confederates. And Mr. *Montagu* is expressly forbidden in the Letter, to mention the Money at all; in Case the *French* King did not accept those very Propositions of the Confederates, and in the Terms as his Majesty receiv'd them from his Ambassador at the *Hague*.

This Argument also is like the rest, grounded upon the Propositions; and is made to prove, that the Money was not designed

designed for ill Purposes, because there was so great a Care expressed of sticking entirely to the Propositions. Sure he forgets, that but a little before he says, That this Lord in his Letter assures him, that they were sufficiently inform'd, the *French* desired Peace upon those Propositions. It seems strange then, that the Justness of sticking to them, should be so insisted upon, when the *French* had given their Permission by the Approbation of them.

I wish, that in this Paragraph, the Argument and Respect for his Majesty's Honour had been better defended, or wholly let alone; but first to bring the King's Honour in Question, and then to argue so ill in the Defence of it, was Two great, tho' not equal Crimes; for no Guilt but Treason can exceed or equal that of too boldly meddling with that sacred Subject.

The Fourth is a new Sort of Argument, from the last Words of the Letter, where the Earl tells Mr. Mountagu, *That he believes that would be the last Time any Proposals of Peace would be made; and that he is confident they will not be accepted; wherefore he might accordingly take the King's Measures and his own.*

How to apply this Argument for any Use to this Lord, I know not; it only expresses an Apprehension or Opinion, That the Proposals

posals would not be accepted: Sure he cannot mean the Proposals that he says were received from the Confederates; for those, he was inform'd, were desir'd by the French: It could be only the Propositions for the Money, that probably gave the Apprehensions of the Refusal.

After these Four Observations, he proceeds to that Expression about the Parliament (which he supposes has been a principal Cause of giving them Offence) and plainly avows, that he has heard this Lord say, That his Majesty caused that Expression to be used, only for a Motive to persuade the King of France, to give a greater Sum than Six Millions of Livres, which then had been offered; and because otherways in the ill Posture Things then stood betwixt the Two Kings, the French King might suspect whether the King of England would agree to any Peace at all: And these being the whole Contents of the Letter, and being writ by His Majesty's express Order, you will easily conclude this Lord could not be so hardly prosecuted for that only, were there no other Causes for it; when in truth he believes there are very few Subjects, but would take it ill not to obeyed by their Servants; and their Servants might as justly expect their Master's Protection for their Obedience.

Before I enter upon the Argument of this Paragraph, 'tis fit that I should first avoid

void the Crime, that I presume to condemn in this Lord? For if I should endeavour to prove the Thing to be ill in its own Nature, and by Silence leave the King entitled to it, I should share the Guilt so common to this Lord. I will therefore, first endeavour to do my full that Justice, which the Law does the Nation, to separate the King from Wrong or Dishonour; and I will after, in a more proper Place, examine the Argument drawn from Obedience.

I need not go about to prove the well-known Maxim of the Law, *That the King can do no Wrong*; and if he cannot be liable to do Wrong, none can entitle him to be the Author of Wrong done. And this is not only Matter of Law, but grounded upon Prudence and Necessity; for to allow it to be possible, that a King could do no Wrong, and yet that he is accountable to none but God, were to grant, there is a Mischief without the Compass of the Laws; and 'twere rational, if the King could commit the Offence, that he should be subject to Men to judge the Punishment. Therefore justly tis said of the Ancient Lawyer *Baton*, who wrote in *Hen. 3. Time: Ipse enim Rex non debet esse sub homine, sed sub Deo*, &c. and by the same Reason the King's Honour is as little subject to Men, as his Person; accordingly the Act of the 13th of

of the King expresses a Care of the Preservation of his Majesty, by declaring, That in his Honour and Happiness consisted the Good and Welfare of his People; so that of Consequence, any one that attributes Dishonour to the King, is an Offender against the Good and Welfare of the People.

On the other Side, if any Favourite or Counsellor should be discharged from ill Actions or Counsels, by charging the King with the Allowance or Knowledge of them, what an Encouragement might this be for guilty Men, and what an *Asylum* to fly to when the Guilt is committed? In the same Act there is a heavy Sentence on any that shall say the King is a Papist, or shall any ways, by Word or Writing, publish or utter any thing to incite People to the hatred or dislike of the King's Person. I would desire any to consider, whether any of these Crimes would be answered by Pleading, that what was said, was spoken by the King's Knowledge and Allowance; it would appear, the King that can do no Wrong, cannot avow the Wrong done to him and his People. If this should appear rigorous to any, let them but equally compare the Inconveniencies on both sides, and it will appear by this way, some particular Men of shaken Consciences and Principles may

suffer by their own Folly, than by the other way, the Publick may suffer under the projected Guilt of a few Corrupted or Ambitious Persons.

And since in all Ages it appears, how fast Men are to the Impressions of Wealth and Power, how fast will it seem there should be no excuse for ill Councils; and those that will undertake the Care of great Things, ought to bear the weight and hazard of the Employment. This would increase the Care of doing Well, and opposing Ill; and great Men would find it better and safer to depend upon their own Virtues, than on their Flatteries; and Truth will then appear the best Policy, when Falshood becomes the greatest Danger. And I will venture to add this farther Remark, That this Lord hath been bolder in this way, than ever any Subject was; and it looks like an ill return to his Gracious and Bountiful Master, that he never entitles him to any thing for his Honour; but as I observed before, in the Balance of the Goldsmiths, he wholly attributes the good Action to himself, and would make the King's Treasure purchase his Honour and Esteem.

I have heard of such generous Friends that have changed themselves with their Friend's Misfortunes, to make themselves capable

capable to suffer for them; but this Lord has not acted so for his King, but on the contrary, would be in things on him: For if what was charge upon him had been avowable, there was no need to make any other Plea, than what might proceed from the nature of the thing.

This brings me to consider the Expression about the Parliament, which he might justly indeed suppose had been a principal Cause of giving Offence.

Having now with just Duty separated the King from the concern of this matter, I dare proceed to consider it with the Reason of the Paragraph.

I agreed with the Author, that the Clause that gave the Parliament Offence, (he might have added, and every Englishman that read it besides) was this:

In case the Conditions of the Peace shall be accepted, the King expects to have Six Millions of Livres yearly for Three Years; from the time that the Agreement shall be signed by both his Majesty and the King of France; because it will be two or three Years before he can hope to find his Parliament in an Humour to give him Supplies, after the having made any Peace with France.

The Reason given for this Clause is remarkable; that it was inserted only for a Motive to persuade the King of France to

give a greater Sum than Six Millions of *Livres*; because otherwise, in the ill Posture things stood in, the *French* King might suspect whether the King of *England* would agree to any Peace at all.

I cannot imagine the Force of this Argument, unless it be to shew, That there was no Motive to the *French* King to give Money largely, nor to make him believe the King of *England* was firm to him, but the Conditions of keeping off Parliaments.

How clearly does it now appear, That this way only the *French* believed their Interest was to be supported; and as if the old Arts of Adjournments and Prorogations had not been sufficient, it is projected now to let a Lease of Parliaments to the *French* for Three Years; and 'tis reasonably guess'd they would have been out of Humour to grant Supplies, when Supplies were gotten from others to destroy them; but how after Three Years the Parliament should be brought in Humour, is not to be supposed; 'tis more probable that the Lease would have been renewed.

The next Objection to this Letter (he says) has been, That it was writ the 25th of *March*, 78: which was five Days after the Parliament had past an Act to raise Money for an actual War with *France*.

This

of the Earl of DANBY. 101

This is confess'd to be true; but Answered,

First, *That an Act to raise Money for a War, is no Declaration of the War.*

But that Act was grounded upon a Message from the King to the Parliament for an Actual War, and 'twas so declared to be by one of the Secretaries in the House of Commons: But now 'twill be hard for this impartial Friend to advise his Lord which to stand to, whether the King was Author of the Message sent by the Secretary, or of the Clause in his Letter: For sure, though he has been very bold with the King, yet he would not make him own Contradictions at the same time.

The Second is, That till such Declaration, all Treaties are lawful; and even then too, if the King pleases, in whom the sole power of making Peace and War is made by Law.

There is no question, but in the time of War declared, the King may treat of Peace; but whether this Lord may treat for it in such a way, as by the Clause of the Letter, is the more proper Question.

Thirdly, he says, That the King's Ambassadors were then at Nimegen treating of Peace, and were indeed never recall'd, nor forbidden to treat the Peace; and can it be thought a fault, for a Minister to obey the King's Or-

and at Home, as the same Subject upon which other Ministers were acting at the same time.

This is the usual manner of Arguing; but it affords some new manner of Answer, which arises from observing, that the Ministers abroad treated upon the same Subject as this Lord did at home, which implies they all treated for so much Money to be the Price of Parliaments; or else this Minister may be in fault, though the others were not! But I suppose the Ministers were not so bold upon this Point Abroad, as this Minister was at Home; and if not, the Argument is at an end.

The Fourth Argument is composed of no new matter, till at the latter end 'tis said, That had it been a Crime, his Majesty's Ambassador at Paris must be in as much (if not more) Fault to have obeyed the King's Orders at second hand, as this Lord was, to obey his Majesty's immediate Commands from his own Mouth, and signed by his Hand.

I have before taken notice how little it adds or diminishes to any Offence, to compare it with what others have committed; it being only just and proper, that every thing should bear its own weight. But if it were not so, I should not trouble my self to dispute whether the same Fault was great-

est

est in the first or second Concoction; but possibly the first might be the Adviser and Obeyer both, which the last could not be. But perhaps the meaning of this is, that the Ambassador had been in the greatest Fault, if he had believed this Lord, that it was the King's Order. But Mr. *Mortagne* did not seem guilty of such an Error, as to believe so much in this Lord, or so well of the Business; yet in his Speech in the House, as well as in his Letter, he affirms, He could produce the King's Hand for the most material things, and particularly for the Letters now made use of against him.

I know not what Papers such a one, so great in the King's Trust, and who usually presented him with so many, might get sign'd; but he had shewed the same respect to the King to have published them, as to own he had them.

After this, he winds up all upon this sure bottom, in these Words:

In short, it would be all for Ministers of State, and worse for their Masters, if the one may not command, and the others be obliged to Obey, &c.

Though this Argument of Obedience has been often us'd, I thought here would be the properest place to take notice of it; remembering a little before he says, There are very few Subjects, but would take it ill,

sent at home, as the same subject upon which other Ministers were acting at the same time, and so on.

This is the usual manner of Arguing, but it affords some new matter of Anticipation arises from observing, that the Ministers abroad treated upon the same Subject as this Lord did at home, which implies, they all treated for so much Money to be the Price of Parliaments; or else this Minister may be in fault, though the others were not. But I suppose the Ministers were not so bold upon this Point abroad, as this Minister was at Home, and if not, the Argument is at an end.

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It would be ill for Ministers of State, and worse for their Masters, if the one may not command, and the others be obliged to obey.

Though this Argument of Obedience has been often us'd, I thought here would be the properest place to take notice of it; remembering a little before he says, There are very few Subjects, *but would take it ill,*

not to be obeyed by their Servants; and their Servants might as justly expect their Masters Protection for their Obedience.

I desire any Reader, more Impartial than this Author, to consider the Fallaciousness of this in every Particular. First, sure there are few Masters that would expect Obedience from their Servants in unlawful Things; and the Servants could less expect Protection, unless their Masters were above the Law. The great Master of the Nation can give no more Protection, nor require more Obedience than the Laws of God and Man allow. If Obedience is the excuse of ill Acts, it ceases to be a good Duty; and if Absolution be fixt to Obedience, all Crimes have lost their Natures, and Counsellors should only be sworn to a Prince's Will, and not his Interests. If a Prince of another Religion should command a Change in me, would the Obedience be a good Plea at the last Tribunal? And the Reason holds the same in every lesser Crime. But this Argument of such an Implicit Obedience, is only put into the disguise of Conscience, to prevent the true Obedience of Christianity, rather to suffer than do ill; but such a Notion of Conscience is much more pleasant, that shelters Interest and Ambition, rather than the other that exposes them to hazard.

I have

I have now gone through this Lord's Performances, in the Treasury and State Affairs. And as for that which follows, about the Murder of Sir Edmundbury Godfrey, I easily agree them to be Libels that Charge this Lord with it; and think it must be an Accusation against the Witnesses, Judges, and Jury. And I for my part must confess, that the Matter appeared to me clearly and fully prov'd.

As to what relates to the Popish Plot, I leave it to others that know more; not pretending to meddle with any thing that I have not had some particular Knowledge in. And therefore shall say little to his Concluding Argument, upon an Objection raised by himself, *Why an Innocent man should withdraw from his Tryal; and then upon his Appearance, quit all Defences, and betake himself to a Pardon?* But this Particular, of Making a Defence, or Relying upon a Pardon, belongs only to the Lord himself; and to draw Arguments from thence to imply a Guilt, would rather shew a Desire to find a Crime, than prove it. Nor will I meddle with the Nature of his Pardon; by what Means obtained, or how Valid; that must be consider'd in a more proper Place; and were too

much

much Confidence in any single Writer, to Anticipate a Parliament's Judgment: But this Impartial Writer taking it for granted, that he has made it evident that this Lord was a Good Minister and a Good Englishman, he concludes, that it may be reasonably objected from thence, Why a Man so qualify'd to Defend himself, should quit all Defences but his Pardon: But if by the Observations that I have made, the Contrary does appear, his Pardon was certainly the best Defence to insist on.

The Conclusion of this whole Matter brings me to my last Observation, upon the Complaint made, *That Innocence is no Protection to Prince or Subject*: For one, he instances the last Blessed King; for the other, this Lord; and makes the Severity of their Cases equal. This indeed, if true, is a sufficient Answer for Pleading his Pardon, when his Innocency could be no Protection; and agrees with the Foundation laid down in the Beginning, *That Malice had too great a Share in his Prosecution*: So that he returns a Charge upon his Prosecutors, the Commons, for Malice; and against his Judges and Jury, the Peers, as no Regarders of Innocency: Though in this Lord's Case, arguing against the

Tabellens, that would fix Sir *Adam* Giffey's Death on him; he says, in that they did accuse the Witnesses, Judge and Jury, that Condemned others for it. But now it seems he argues another way, not allowing so much Favour to Lords and Commons, as to the others; nor does he deal less boldly with all Kings, and their Reputations, that come in his way. Upon this King he endeavours to fix many of the Crimes charg'd on him; and with his Father's Sufferings and Virtues compares his own: The Excellent Nature and Bounty of the first, has little merited the Return, as the Case of the last did the Comparison.

I have not wanted Reflections, That it seems severe to endeavour to add Weight to the Unfortunate; and were there no Cause given, I should censure it as a Want of Generosity to say any thing, tho' true, that might add to Affliction; But since 'tis charged upon all, That Malice may have too great a Share in the Prosecution of this Lord; I preferred my Duty to the Publick, before any particular Consideration; in presenting these Observations, to inform them of those Truths, which by so many Disguises are turn-
ed

ed into Masquerade, and needed some that were well acquainted with them, to make the Discovery of every Particular. And the Reader is now left to judge, whether they are well used in the Promise of so much Truth, in this Impartial Case of the Earl of DANBY.

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The Earl of DANBY'S Answer
to the EXAMINER.

I Have lately seen a Pamphlet call'd, *An Examination of the Impartial State of the Case of the Earl of Danby*; and pretended to be an Answer to *that State*; but instead of being so, I find it (as I believe was the whole Intent of the Author) to be only a Scurrilous Libel against me, every Page of it having something of that Nature in it.

I cannot learn certainly who is the Author; altho' he says he has been very Conversant in my Affairs; and pretends to be furnish'd with more particular Knowledge of them than other Men: But I believe, that is but a Pretence for the more specious Wounding of me; because it is too Knavish a Part for any body who was a Servant or Officer under me to do, for his own Sake, had the Subject-Matter of it been true; but I find it to be so generally false, that it is impossible for any that related to the Exchequer or Treasury

to be so ignorant of the Matters of Fact:
 Besides, to have told so many Untruths
 knowingly, and under Colour to do his
 King and Country Service, is an Action
 too black to believe of any Man. Altho'
 I must confess, I know not how far such
 a Man may go, as abandons all the Rules
 of Honour and Generosity, in Speaking
 of one under Restraint, Things that he
 knows ought not to be said of any Gen-
 tleman.

He is so sensible of this Fault himself,
 that he thought it needed an Apology;
 but is able to make no better an one for
 it, than by another Untruth; which is,
 that he says it is charged upon every Body
 by the Author of the State of my Case,
That Malice may have too great a share in the
Prosecution of me. Whereas the Expression
 in that Letter, is in the Beginning of it,
 and speaks only of the Cause which
makes some men suspect whether Malice may
not have too great a share, &c. So if that
 Reason supported him against the Want of
 Generosity, which otherwise he con-
 fesses himself, he might justly be comforted
 for. Tho' he hath shew'd himself a very
 mean Enemy, yet he has been so favoura-
 ble to me through his whole Book, that
 most of his Reasons and Inferences have
 been

been suitable to this Beginning; and I intend not to trouble my self with Repetition or Answering them; nor with his frequent Contradictions of himself; but shall barely inform the Truth of those Matters of Fact, which the Author has falsly related: Having no Design but to Vindicate my self from all Aspersions, of having done any thing knowingly to the Prejudice either of my King or Country.

The Examiner has pursued no Method; and therefore I must be excused to take the Matters of Fact confusedly, and to Answer them in the same Order as they stand in his Paper.

In the first place, Page 15, he charges me with having applied Two thousand seven hundred forty seven Pounds, Five Shillings, and Eleven Pence, to my own Use; and to have been short so much in my Account of the Navy: Which is very false; for the Money was remaining in my Hands, and always own'd by me to be so. But it is true, that his Majesty, at my Leaving the Place of Treasurer of the Navy, was pleas'd to remit me that Sum on the Balance of my Account. And I hope his Majesty is best Judge, whether my Service in that Station deserved such a Reward.

The

The next matter of Fact mentioned, as to Money, is the 18 Months Tax. (For I shall take notice of his Suggestions upon that and other things, when the Facts are cleared.) This was payable in six Quarters, *viz.* The Third of June, 73. Third of September, 73. Third of December, 73. Third of March, 74. Third of June, 74. Third of September, 74. And I entred to the Treasury the 19th of June, 73. so that I received all that came in of that Tax, saving what was paid between the 3d and 19th of June, 73. Inasmuch that the Examiner in that particulat is so near speaking true, that the whole Six Quarters were paid in my time; but besides the first three Quarters, which the Examiner confesses were Assigned by my Lord Clifford, there was also Twenty one thousand, One hundred sixty three Pounds, Six Shillings and Eight pence, charged by his Lordship on the fourth Quarter of that Tax; and if the Examiner were as knowing as he pretends to be in the *Exchequer*, he must know that the last Three Quarters of that Tax brought clear into the *Exchequer*, only the Sum of Five hundred sixty five thousand, Four hundred ninety eight Pounds, Thirteen Shillings and ten pence half-penny; After all Charges deducted, Out of which Sum is likewise to be taken the afore-

foresaid Sum of Twenty one thousand; one hundred sixty three Pounds; Six Shillings and eight Pence.

When he comes to what the King lost in his Customs by the Corn Act, and the Act for prohibiting *French Commodities*; he answers that, *by calling them slight Particulars*, although one of them was above Sixty Thousand Pound a Year, and the other estimated to me by the Commissioners of the Customs, at One Hundred and Fifty Thousand Pound a Year. And herein he arraigns his own Skill, as much as he undervalues the King's Loss, by saying, Page 61. *that none can guess what those Acts might lessen from the Customs*. Whereas the Computations are duly made thereof every Year by the Comptroller of the Customs; by whose Certificates the Corn-Debentures amounted in my time to more than Sixty Thousand Pound a Year, for the Years 76 and 77; and what the loss by the Prohibition hath amounted to, could not appear in my time. At last, he ends that Paragraph with an Argument to confute the Author of my Case, by which he has done me much more kindness than that Author did; for he says, *it will appear the Customs never yielded so much as in my days*. By which he acknowledges a better Management of that Revenue in my time, than

before; and let who the Examiner pleases have the Honour of it, since His Majesty has had the Profit.

The 3d Page is so full of Falshood and Ignorance, that I know not of which there is most; for he charges me with *Misdirecting Money from coming into the Exchequer*, which was sent on the fifth part of the Excise, and diverting it to other uses, which is notoriously false; and he says Mr. BARTLE, or a Private Letter was the Voucher for the Commissioners of Excise placing and having allowed to their account many Sums of Money which were paid by my Private Direction; Which is not only untrue, but utterly impossible; there being nothing less than a Tally or Privy Seal which can be such a Voucher.

The next Charge this Examiner endeavours to lay against me, is about the Poll-Bill, and that because some of the East-land Merchants were not paid for some Goods which were contracted for by the Commissioners of the Navy, beyond the Sum that it amounted to.

It is in this, as in most of the Particulars throughout the whole, both the Examiner's Misfortune, and mine, that he knows so little of the Matters he meddles with; for if he had known better, he would have given both me and himself far less trouble: For as an Exchequer-Man, he must have known,

known, that the whole Bill brought in but Two Hundred Fifty Six Thousand Two Hundred Twenty-three Pound, Two Shillings and Four Pence, to the King's Use; of which he Charges me with the Receipt but of Two Hundred Fifty Two Thousand Nine Hundred Pound in my time, and it was all issued according to the Direction of the said Act, to the Navy, Ordnance, and Forces: *Which himself in the last foregoing Page has said could not be otherwise;* so that he might have answered himself, why no care could be taken by me to reserve Money for them out of that Act; and before my going out I had procured the King's Warrant for making them Assignments upon the Revenue for their remaining Debt, but was removed before the said Assignment could be perfected: And had the Examiner either been privy to the Proceedings of the House of Commons, or that he would have perused the Act it self, he would have known, that the Parliament gave Credit by that Act for Three Hundred Thousand Pound in Money, and an indefinite Credit for Goods and Stores beyond the said Three Hundred Thousand Pound; so as had the Act held out but to the Money-Credit given by it, the *East-land* Merchants had been long since paid the greatest part of their Debt: And therefore the Reader will

see how unjustly I deserve the Reflection made upon me in that Particular.

In the same Page he does against his will acknowledge the Improvements of the King's Revenues in my time ; only he has no mind to admit me any share in the doing it, which, as I have said before, I am contented with, the King's Service having been performed ; And for the Case of Mr. Bret, &c. it has been so lately Re-examined, that it has sufficiently justified it self ; and I do further aver, that His Majesty did by that Contract with Mr. Dashwood and Partners, get near Fifty Thousand Pound a Year Increase to his Revenue of Excise, more than ever any did offer by a certain Farm, or than ever was made before of that Branch of the Revenue.

For the Improvements in Ireland, he pretends to know little of them, because he fears it might be to my Advantage ; for otherwise he seems through the whole, to pretend to such a general knowledge, as could be ignorant of nothing in this World.

In Page 65, he tells you most truly, that you are not always to appeal to the Weekly Certificates for Proofs. In which I agree with him ; for I have had out of the Exchequer some of those Certificates, which have not been true, and that to the Mistake of Ten or Twelve Thousand Pound in one Week :

Week: But in the same Page he takes great pains to shew, *that I could not know what Interest I paid, though I might know what I agreed for*; which is very ridiculous, for there was no Allowance made for Interest of Money, but upon an account of the particular Sums lent, the Times of lending, and Days of Repayment stated and adjusted by one of the King's Auditors upon Oath, examined by the Chancellor of the Exchequer, allowed and sign'd by the Lord Treasurer and Chancellor of the Exchequer; and consequently what Interest was paid, must needs be known both to my self, the Chancellor of the Exchequer, and the Auditor, before whom the said Account is stated: And whereas the Examiner asserts, *that nothing will be found in the Weekly Certificates of the Payment of any such Interest at all*; it is so much the contrary, that in many of the Weekly Certificates it will appear, that such Interest is therein accounted; and I dare be confident, there will not appear above Eight *per Cent*, unless it be for some inconsiderable Sum or Time.

In the next Paragraph, Page the 67th, he comes to what *he calls the Foundation of all his Work*, and says *he will furnish the Author of my Case with a Computation more particular than perhaps he desires, and will pull off the Vail*; which if he had done, he would

have Corrected the Author of that Case, by setting down a true Computation; as I would have done my self, if the said Author had consulted me before his Book had been Printed: But there are divers things I would have altered therein, had I been the Author of it, although I know not one Matter of Fact that is untrue in the whole, (except the said Computation, which was to my Disadvantage) nor has this Examiner made appear that there is; and if I had been so friendless, as he supposes me, that no Body would have writ in my Defence, I would at least have been my own Friend so much, as to have set down the Sums in it to my own advantage where they had been true, and so ought this Examiner to have done, if he had been honest.

He lays hold of a Mistake of the Author of that *State*, (for I cannot call it an Untruth, because it is a Sum less than the true one, and to the Prejudice of him whose Case he designs truly to represent) It is a Computation the Author of the *State* makes by a Certificate of the Pells from *Easter 73, to March 79.* amounting to Eight Millions, Two Hundred Seventy Six Thousand Seven Hundred Sixty Seven Pounds; besides Interest to the Goldsmiths, and other Particulars, which makes it very

un-

uncertain ; and besides that, it commences from a time three Months before my entrance to the Treasury, and is liable to the Examiner's Cavil, unless by his knowledge he would either have rectified it, or his Printer's Mistake, who I rather believe has told the untruth on my side ; for he has made it *Eight Millions, sixty two hundred seventy six thousand, seven hundred sixty seven Pounds* ; which makes Fourteen Millions Two Hundred Seventy Six Thousand Seven Hundred Sixty Seven Pounds : But I suppose he means the first Sum of Eight Millions, &c. that he may the better disguise what he there endeavours to have believed, which is, that the Revenue in Five Years and Three Quarters, *viz.* From *Midsummer 73, to Lady-Day 79*, amounted to the above Sum of Eight Millions, Two Hundred Seventy Six Thousand Seven Hundred Sixty Seven Pound ; whereas he cannot possibly be so ignorant, as not to know, that what has arisen from the Revenue alone in that time, has not been near that Sum : And by *Sir Robert Howard's State* thereof, for the Year 75, (which is hereunto annexed) he tells you it amounted that Year but to Six Hundred Fifty Six Thousand, One Hundred Seventy Two Pound, clear to the King's use.

The Sum also which the Author of the State calls Eight Millions, Two hundred seventy six thousand, Seven hundred sixty seven Pounds (accounting from *Easter* 73. to *Lady-day*, 79,) ought to be Ten millions, Eight hundred sixty seven thousand, One hundred twenty six Pounds, (betwixt the 23d of *June*, 73. and *Lady-day*, 79.) He knows likewise amongst the Supplies which this Examiner tells you were given by Parliament, *Viz.*

The 18 Months Tax amounting to	1238750
The Tax for building Thirty Ships	584978
On the fifth Part of the Excise	200000
The Poll-Act	252900
The first Act for Disbanding the Army, and other Uses,	619388

In all ———— 2896016

That the Two hundred thousand Pounds, mentioned on the 5th Part of the Excise, is accounted double, being part of the Six hundred and nineteen thousand, three hundred eighty eight Pounds, (so grossly wilful or ignorant are the Mistakes in his Calculations) and One hundred fifty two thousand, Seven hundred fifty seven Pounds, part of the said Six hundred and nineteen thou-

thousand, Three hundred eighty eight Pounds, is not within the foresaid Sum of Ten millions, Eight hundred sixty seven thousand, One hundred twenty six Pounds; because so much of the said Six hundred and nineteen thousand, Three hundred eighty eight Pounds, was not come into the *Exchequer* in my time.

His next Head is about secret Service, where he talks of a *Compound of Mistakes*, but shews not one but in himself; for to make Proof of what he says, he affirms, that my Pension of Eight thousand Pounds per Ann. as Lord Treasurer, was never included in secret Service; whereas it was never paid otherwise until Michaelmas, 1676. and by a Warrant dated the 12th of July, 1676. which I procured to express the particular Service, nor in all my Lord Southampton and Lord Clifford's times (and I think the Lords Commissioners) was it ever otherwise than by Secret Service; so that (to use his own Phrase in that Paragraph) it will be seen to whom this Instance is most unlucky.

Indeed he seems offended that the *Exchequer* does not know all the uses to which Money is applied, under the Head of Secret Service; which is an Imposition that the Examiner (whoever he be) would be loth to have put upon himself in his own

MEMOIRS, &c.

own Expences, how regular soever those may be.

For the Sum of Secret Service delivered in Parliament, I do not know when he means that delivery, unless it were at the time of my Impeachment, when by the Articles of that Impeachment, I was charg'd with having laid out the Sum of Two hundred thirty one thousand, six hundred and two Pound, for Secret Service, in two Years; which must then be meant from Christmas 76, to the time of my said Charge, which was the 23d of December 78. But as that would have appeared to have been a very wrong Computation which was then given to the House of Commons, so it will appear by Sir Robert Howard's Certificates, that the Examiner is as much mistaken in his Computation of Two hundred fifty two thousand, Four hundred sixty seven Pounds, for Secret Service, in the space of Two Years and Three Months, there being no such Sum in that time; but I find Two hundred fifty two thousand, Four hundred sixty seven Pounds to be the just Sum accounted under the Head of Secret Service, in Three complete Years, viz. from Lady-day 76, to Lady-day 79, which amounts but to Eighty four thousand, One hundred fifty five Pounds, thirteen Shillings and Four-pence a Year, and is a Sum I should not have thought a

Man

Man expressing so much Service and Duty to his Majesty, would have wondered at, though it had all been laid out in the space of Three Years, without giving him or any body else an account of it; but had there been an Opportunity for that Account, I had shewed, and am at all times ready to shew and prove, with his Majesty's leave, that Fifty seven thousand, Seven hundred sixty three Pounds at least of that Sum, hath been disburs'd for publick Uses; and then the remainder of this pretended Grievance has been at most but One hundred ninety four thousand, Seven hundred and four Pounds in three whole Years; which has been but at the rate of Sixty four thousand Nine hundred and one Pound Six Shillings and Eight-pence a Year.

After all these Computations and Proofs pretended to by the Examiner, he confesses *Page 72.* That no demonstrative Argument is to be framed from the Particulars he has mentioned, but will therefore betake him to Generals for the sure Proof of all: Which I believe is the first time of such an Undertaking, and shews sufficiently how falsely this Examiner pretends to the Knowledge of Exchequer Accounts.

When he comes to this plain Account of Generals, he says, he has a Copy of a Paper dated the 10th of June 73. under Sir Philip Floyd's

Floyd's *Hand*, which would not pass for a Proof in this Case, if it were true; but that I might know the Truth of it, I writ to Sir *Philip Floyd*, and had this following Answer from him; by which it appears both how much Sir *Philip* has been abused by the said printed Paper, and how different a State was made up by Sir *Robert Howard* my then Secretary, the 21st of June 73. which was but two Days after my having the Staff.

A Copy of Sir *Philip Floyd*'s Letter.
Dated, March 18. 1679.

My Lord,

I Have received the Honour of your Lordship's Letter of the 15th Instant; and in Answer to it, I do hereby assure your Lordship, that I have at no time given any State of the Revenue to any Person, but to such as from time to time have been my Superiors in the Treasury. And as for this thing in particular, which is printed in a Pamphlet under the Title of, An Examination of the Impartial State of the Case of the Earl of Danby; and call'd a Copy of the Condition of the Revenue, as it was left by the late Lord

of the Earl of DANBY. 125

Lord Treasurer Clifford, and said to be procured under my Hand; I do declare to your Lordship, that my Name is abused in it. And to convince your Lordship that such a Copy could never come from me; give me Leave to say, that I have Examined such Papers as I have by me concerning the Revenue, when your Lordship received the Staff, and I find it to be false almost in every Particular. As for Instance: I find the Customs were left Charg'd with—245905 l. 19 s. 3 d. besides the Weekly Charge for Tangier. Upon the Excise I find—201148 l. 13 s. 8 d. Upon the Hearth-Money—22318 l. 11 s. 0 d. The Law-Bill left quite useless; and which is far different from the Examiners Printed State. And then, for the Three last Quarters of the Tax; they were not left clear neither, as the Examiner is pleased to say: For, the first Quarter of those three, I find to have been Charg'd with 21163 l. 6 s. 8 d. before your Lordship's Time; and of the whole of those Three Quarters, there came only Five hundred sixty five thousand, odd hundred Pounds into the Exchequer.

I could enlarge upon the Errors and Falseness of this Pamphlet, concerning the Revenue, in many other Particulars; but having, as I humbly conceive, fully answered your Lordship's Commands, in assuring you, and shewing to your Lordship, that no such
Copy

Copy of the Examiner's Report Printed could
 come from me; I will give your Lordship no
 further Trouble with any Remarks of my own
 upon it; but take Leave only to remember your
 Lordship of a Paper which I have seen in
 your Lordship's Hands, of better Authority
 than any thing that I can say: Which is a
 State of the Revenue presented to your Lord-
 ship, by Sir Robert Howard, the 21st of
 June, 1673. which was Two Days after you
 enter'd upon your Office; Wherein having sta-
 ted the Income of the Ordinary Revenue, and
 the Expenses for that Year, by way of Debtor
 and Creditor; he finds the Expence would ex-
 ceed the Income by the Sum of 1163400 l.
 And there is no doubt but Sir Robert How-
 ard, who was furnish'd with all the Means of
 making a true Calculation, did take care to
 do so; and that, in my humble Opinion,
 (my Lord) will be of considerable Use to your
 Lordship, to shew the Mistakes of this Exa-
 miner; I beg your Lordship's Pardon for this
 long Trouble; and am,

My Lord,

Your Lordship's most Obedient,

and most Humble Servant,

Philip Floyd.

Having

Having perused the said State of the Revenue mentioned in Sir Philip Flood's Letter, which was given me by Sir Robert Howard, the 21st of June 73, and remains in my Custody, I find it to agree exactly with Sir Philip's Letter, both in the Calculation of the Expence of the Year 1673, to exceed the Income of that Year, by the Sum of one Million, one hundred sixty three thousand four hundred Pound, and in the Sums which were left Charg'd upon the three great Branches of the Revenue by my Lord Clifford; nor could any Copy of the said printed Paper come from his Lordship, because there is not one half of it true: Besides, this Examiner is not only ignorant of things in the Treasury, but he does not know the Officers of it at that time, for he mentions a Letter from Mr. Mountney, dated the 10th of November 73, and says it was directed to Sir Robert Howard (then Secretary to the Treasury) whereas Mr. Bartie was then my Secretary, and not Sir Robert Howard.

The Examiner closes his Report concerning the Treasury, Pages 76 and 77, wherein he pretends to shew: First, That the Revenue was left Charged with less than Three hundred thousand Pounds (Advance-Money excepted) at the time of my Lord Clifford's leaving his place: Secondly, that there was

Nine

Nine hundred forty two thousand, Five hundred Pounds then left in Money. And Thirdly, that the said Revenue was computed to be left charged with One million, four hundred eighty five thousand, Five hundred and seventy Pounds, sixteen Shillings and four pence, at Lady-Day 1672. I suppose he means 1679. when I was removed from the Treasury: Although I could no more know he means that time by the Computations he has made, than I could by that Year of our Lord which he has Printed.

The first and second of these are proved from that Copy before mentioned, pretended to be from Sir Philip Floyd, to which Sir Philip's Answer has been seen, and consequently the Truth of his *sure Proof*: But that it may be truly known how the three great Branches alone were left charg'd by my Lord Clifford's own Computation, it is therein set down, that,

	L.	s.	d.
The Customs were then			
charg'd with	245905	19	03
The Excise	201148	13	08
The Hearth-Money	22318	11	00
In all	469373	03	11
			besides

besides that the smaller Branches were left
useless for the said Year : And in the same
Computation (which I have in my Custody)
it is estimated that for the said Year of
1673, there could not be expected for the
Service of that Year from the aforesaid
three great Branches, any more than Seven
hundred forty six thousand six hundred twenty
nine Pounds, and the Establishment of
the constant yearly Expence (besides the
great Sums owing at that time to the Fleet
and Army, then in being for the said Year)
amounted to above One Million three hun-
dred thousand Pound *per Annum*. And here I
must have leave to observe, that had it not
been for that Chargeable War against the
Dutch, it must have been strange that any
considerable Charge should have remained
on the Revenue in the beginning of the
Year 73, which was so soon after a total
Post-poning of the King's Debts, and when
the Credit was so broken, that through the
whole Year of 72 I believe there was not
Twenty thousand Pound borrowed on the
Credit of the Revenue.

From the same Copy of what he calls Sir Phi-
lip Floyd's Paper, and his sure Proofs of all,
is made his next Calculation; that there
was Nine hundred forty two thousand five hun-
dred Pound left in Money; *viz*

By the last 3 Quarters of the Tax—600000
 From the Advance of the Excise—150000
 From the French Money—112500
 Upon the 3 Quarters of the Subsidy, 080000
 In all—942500

As to the first of these Sums, (as I have said already) the said last three Quarters brought in clear to his Majesty's use but about five hundred sixty five thousand four hundred ninety eight Pound; which is about the Sum of One hundred eighty eight thousand four hundred ninety nine Pound, for each Quarter one with another; and the first of those Quarters was charg'd with Twenty one thousand one hundred sixty three Pounds, and was not payable till the third of March following; which was full three Quarters of a Year (wanting but sixteen days) before I could expect the first Quarter; which would then be clear but One hundred sixty seven thousand three hundred thirty six Pound: And yet this Examiner speaks with confidence *the whole six hundred thousand Pound to be left in Money.*

The Three last Sums, viz. the Advance the French Money, and Subsidy, amount

ing

ing to Three hundred forty two thousand five hundred Pound, he says, *will be ready in October and November, for Payment of the Fleet and Yards*: Whereas the greatest part of Advance-Money goes always in Repayment of the former Advances, in Case of new Farmers, and is always continued by old Farmers, but no new Money advanced, unless there be an increase of Advance-Money, as at that time was made of about Thirty thousand Pound, which Sum could only be accounted applicable to the present Service.

For the *French Money* I do not know what he means; unless it be a Sum of Eighty five thousand Pound, which I find placed to the Treasurer of the Navy's Account, betwixt *June 73* and *December 74*.

And for the Eighty thousand Pound upon the three Quarters of the Subsidy, it is a Sum in the Clouds for any thing I know of it, having been all expended before my time, or if any thing did come in afterwards of that Tax, it must be some considerable Arrears.

Thus has *his sure Proof* made out in *Generals*, what he confesses he could not Demonstrate by *Particulars*: And I must further observe, that although the last three quarters of the eighteen Months Tax were not assigned by my Lord Clifford; yet much

more than that Sum was then become due to the Fleet and Army then in being: And it is well known, and was owned in the House of Commons by the then Speaker, that within the space of Fifteen Months from the time of my entrance to the Treasury, I had paid above one Million five hundred thousand Pound to the Navy and Army alone; which was three Months before the last of the Eighteen Months Tax was payable into the Exchequer; besides the inconsiderableness of the Sum then come in by that Tax, and of the Thirty thousand Pound Increase of Advance upon the Excise, and of the Eighty five thousand Pound (if that be it he means by *French Money*) to so great a Disbursement as was made to the Navy, and Army only, in the said space of 15 Months.

For his third and last general Proof, viz. What Charge was left upon the Revenue at Lady-Day, 1679. he says, Page the 15th. That to be as clear in this, as he was in the other, he has obtained likewise a Copy of the then State of the Revenue, as it was presented to the Lords Commissioners of the Treasury: And which he says, is as followeth.

	li.	s.	d.
Remains unpaid of Tallies } charg'd on the Customs- }	435	106	01 00
Of Tallies charg'd on the } Excise- }	550	464	15 04
To repay the Advance—	250	000	00 00
The charge on the Hearth- } Duty by Tallies, and the }	250	000	00 00
Advance-Money—			
Total ———	1485	570	16 04

I have indeed been informed that a State of the Revenue was presented to the Lords Commissioners about that time, but I know nothing of it, nor was any thing of that kind ever required at my hands; but if any Body have given them such an one as is printed by the Examiner, it has been a very malicious and wilful Mistake, to charge the Revenue to be under such a Debt, because there were such Tallies upon it, at the time of my leaving the Treasury, unless he would at the same time have shewed the uses of those Tallies: As first, how much of them was for Service forwards, and beyond *Lady-Day* 1679. Secondly, what was to be reckoned in Repayment of some of the said Tallies, which is to a very considerable Sum: And Thirdly, how

much the Advance-Money alone on the Excise and Hearth Duty amounted to; which is not to be reckoned as Anticipation, but as Security for the Rent of those great Branches of the Revenue, and which must be always done if his Majesty were in the most plentiful Condition of his Exchequer; And it may be observed, that the Examiner himself does not charge the One hundred and fifty thousand Pounds Advance on the Excise, as any part of the Three hundred thousand Pounds, which he says was the Charge left by my Lord Clifford; for he tells you *the whole Charge upon the Excise, was then but One hundred and ten thousand Pound.*

The said Advances, &c. therefore being deducted, there will be taken from the Examiner's Charge of 1485570 £ . these Sums following; viz.

	li.
For the Advance on the Excise—	270000
For Advance on the Hearth-Duty—	150000
To be discharg'd by Orders to the Commissioners of Excise on the first Act for disbanding the Army, &c. —————	101000

More

More by Tallies on the Surplus
of the Excise for 30000 l.
and 99000 l. being no Charge
upon the Rent, unless the
Surplus fail, which is not
likely 122000

More by Tallies which were to
pay the Forces from Lady-
day 79. forwards to the first
of July, which was 97 Days
beyond my time; viz. by
29000 l. or thereabouts on
the Excise, and about 30588 l.
on the Customs 059588

More by Tallies on the Cu-
stoms made use of to carry on
the Service of the Navy and
Ordnance beyond the said
Lady-Day, 1679. 035000

More by Tallies struck for Pen-
sions upon the two last Quar-
ters of the Excise, viz. Christ-
mas 78. and Lady-day 79. for
payment of which, Money
was left in the hands of the
Commissioners of Excise a-
bout 033000

More by Tallies upon the Cu-
stoms restored for Tin, which
was deposited in Mr. Kent's
hands 015000

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More by Tallies on the Customs, }
 accounted by the Examiner to } 002342
 be unpaid to Mr. *Montagu*, }
 which were paid in my time--

Total ————— 794930

And then the Charge which ought truly to be said remaining upon the three great Branches (as an Anticipation of the Revenue) at *Lady-day* 1679, stands thus upon each Branch, as near as I am able to compute; viz.

	li.	s.	d.
By Tallies on the Customs	352176	0	0
By Tallies on the Excise	238464	0	0
By Tallies on the Hearth-Duty	100000	0	0

Total ————— 690640 0 0

The said Three Branches of the Revenue were left charg'd (as hath been already said) by the Lord *Clifford*; as follows.

	li.	s.	d.
The Customs	245905	0	0
The Excise	201148	0	0
The Hearth-Duty	022318	0	0

Total ————— 469371 0 0

So

of the Earl of DANBY. 137

So as the Charge upon the Customs is increas'd in 5 Years and 3 Quarters, viz. from Midsummer 73, to Lady-day 79, by the Sum of _____

And upon the Excise in the said time _____ } 037316 0 0

And upon the Hearth-Duty in the said time _____ } 077682 0 0

In all _____ 221269 0 0

As by this it appears that the Anticipations upon the Revenue in Five Years and three Quarters are increased but 221269 l. so I must observe, that there was 1400000 l. paid to the Goldsmiths for Two Years Interest of their Debt, by virtue of a Grant under the Great Seal, dated the 23d of July 1674; and 178473 l. more to them and others, by several Grants of Perpetual Interest, betwixt Christmas 1676, and Lady-day 1679; which together amounts to the Sum of 318473 l. and is truly a Payment of so much of the King's Debt, although it has not been called an Anticipation of the Revenue since the Stop of the Exchequer. The said 318473 l. having therefore discharged so much of the King's Debt in my time, although what are called the Present

sent Anticipations be increased by the Sum of 221269 *l.* yet the King's Debt is really less than it was at my Entrance to the Treasury the 19th of June 73, by the Sum of 97204 *l.*

Notwithstanding that no Aid was given by Parliament in the foresaid time of Five Years and three quarters, but what was appropriated to particular Uses by the Parliament; and notwithstanding the Charge of the War with *Algiers*, and the Rebellion in *Virginia*, which were both great Stops to Trade, and very great Expences to his Majesty. The Examiner indeed undervalues those Expences, as he does every thing to which he can give no better Answers than he has done to that in *Page 60.* wherein he says, *That the Rebellion in Virginia ceased quickly; and while both that Rebellion and the War with Algiers hapned, if there had been a considerable Fleet for Summer and Winter Guards kept out besides, it had been a matter of some Consideration.* So that where he cannot possibly deny the Facts, he endeavours to blemish them by something else: But in this Instance that will not serve his turn, the Summer and Winter Guards having been as great as the need was then for them, and the Merchants will be the best Judges how their Trade was then secured, as well as how

how that War was supported against the *Algerines*.

With this State of the Revenue at *Lady-day* 79, *viz.* that the Debt then upon it amounted to One million four hundred eighty five thousand five hundred seventy Pound Sixteen Shillings and Four Pence, the Examiner ends his Computations concerning the Treasury; the Truth of which will be best decided by the Records themselves: But before he closes that part of his Book, he thinks fit to leave his civil Remarks to the Reader about me, and *threatens me with Ballads*; which by his Style it looks as if he could perform much better than Matters of Account.

Having gone through the Matters of Fact mentioned in this first part of the Examiner's Paper, I should take notice of some of his Suggestions, before I proceed to the other part of it: But those being only Observations of his own, who has dealt so unfaithfully in things which are visible upon Record, I think it will not be necessary to say any thing to them: Only I will inform the Reader, that whereas this Examiner says, that *the Office of Treasurer of the Navy depends upon the Lord Treasurer or Commissioners of the Treasury, for Money to pay*; yet those Supplies I received whilst I was Treasurer of the Navy, were

were two parts of three in Orders and Assignments, and left upon me to borrow Money as I could upon them; insomuch that most of my Time and Care was then employed in that Work: Although I made it far more easy afterwards to the present Treasurer of the Navy, while I remained Lord Treasurer.

I must likewise desire the Reader to observe, that altho this Examiner insinuates, p. 56. *that it would puzzle the Author of the State of my Case to name any Persons who were of opinion that the King's Condition was in great Straits for Money in the first Six Months after my being Treasurer*: Yet that is not only true, but is testified to be so, by that State of the Revenue drawn up by Sir Robert Howard the 21st of June 73, which is mentioned in Sir Philip Floyd's Letter: For he thereby makes appear (as hath been said already) that the Expence of that Year (which in the Establishments is always accounted to commence in January) does exceed the Income of the said Year by the Sum of One million one hundred sixty three thousand four hundred Pounds.

Now besides that State of Sir Robert Howard's (my then Secretary), I am confident the King and his Royal Highness will both remember the straits of the Treasury to

to be then such, and the difficulty so great to get Money for paying off the Fleet at the end of the War, that it was doubted whether some Ships must not have been sent out of the River to Sea again, only for want of Money to pay them; and although means was used to discharge the Seamen of that Fleet without Tickets, yet most of the Money was borrowed which was raised for that purpose, and not without great hardship, as the Credit of the *Exchequer* stood at that time.

I know his Majesty will also remember, that in *March 1675* a state of his Revenue was delivered to himself from *Sir Robert Howard*, which state is remaining in my Custody (a Copy whereof is hereunto annexed) wherein *Sir Robert* sets forth to his Majesty, that his Revenue was then in so ill a Condition, that it could afford him clear but Six hundred fifty six thousand one hundred seventy two Pounds that Year; insomuch that it was thereupon proposed by him to help his Majesty to Eight thousand Pound a Week in aid of his Revenue for his Subsistence, and upon a condition to have all the three great Branches put into the hands of such Undertakers as should be named to his Majesty. In so strait a Condition was the *Exchequer* understood to be so many Years ago, by those who certainly

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ly ought to know the Condition of it much better than the Examiner; and therefore it puzzles no body but himself, to name Persons who were of that Opinion.

A Copy of the Paper delivered to his Majesty from Sir Robert Howard, the 5th of March, 1679.

L. s. d. ob.

The Sum that seems the Foundation and Measure from whence the Suspensions are made;

1351968 00 00

The Sum remaining after the Suspension made, is

1175318 00 06

The Sum suspended, is

0176653 00 06

The last Year's Expenses amounted to

1841938 18 02

Out of which the Navy had

0599320 04 11

Spent the last Year besides what the Navy had

1242611 13 02

The

The Sum of Expence,
after the Suspensions
made for a following
Year, is, 1175315 01 06

The Income for the following Year to
discharge the Expence of 1175315 L. 1 s.
6 d. may arise from these Branches

(The rest of the Excise is charg'd.)

L. Charge. L.

Customs 600000 100000

Excise by the Moi-
ety of Pensions 050000

First Fruits and Tithes 016000

Law-Duty 015000

Small Branches 020000 010000

Hearth-Duty 150000 082828

Toto 851000 Toto 194828

The clear Income re-
maining, is 0656172 00 00

The Income short of
the proportioned Ex-
pence, by 0519143 01 06

He proceeds, *Page 77*, to *Affairs of State*; in Answer to which I shall trouble my self no farther, than to shew his false Quorations of my Letter of the 25th of *March, 1678*, and of the Letter called *The State of my Case*, (as to so much therein as concerns that Letter) leaving the malicious Inferences and Observations through this Part as well as the rest of his Pamphlet, to such as are more ingenious and more knowing in Foreign Business, than I perceive the Examiner is; of which this one Instance may suffice, *Of his Belief that the French Interest was promoted by the Marriage of the Lady Mary to the Prince of Orange.*

Besides his frequent applying of things to me which are not only untrue, but not so applied by the Author of that *State*, he takes the liberty to affirm, that some things are in my Letter of the 25th of *March*, which are not in it, and that they are said to be so by the said Author of the *State*, although there be not such a word in his Book; and he makes one of the said false Assertions a principal Foundation not only of accusing me, but of aspersing the King to the greatest Degree imaginable, whilst he would be thought to shew him as much Duty as I think he has done. Contempt, which is a Crime he truly censures that no Guilt but Treason can exceed.

The said Assertion upon which he builds so many false Inferences, is in Page 92, where he says, *'Tis fit to observe in that Letter (meaning the foresaid Letter of the 25th of March) that the King was sufficiently informed that the French desired Peace upon the Terms sent by the Secretary; whereas it is most plain in that Letter, that the King's Information (which was by Mr. Godolphin) was, that the Confederates desired Peace upon the Terms sent by the Secretary: And in the same Letter it is said, to prevent the King's sending into Holland again, (before he knows the Mind of France) I am commanded by his Majesty, &c.* And, but that the Examiner hath no more regard for Sense, than he has for Truth, it must have been as apparent Nonsense to him, as it is to all other Men, to have sent into France to know what he pretends was known concerning that King already.

In the 94th Page he says again, *Sure the Author of the State forgets that but a little before he says, this Lord (meaning me) assures him that they were sufficiently informed the French desired Peace upon those Propositions: And again, Page the 95th, That sure he cannot mean the Proposals that he says were received from the Confederates, for those he was informed were desired by the French.*

Now from so many Repetitions of things, of which there is not one word, neither in the Letter, nor *State of the Case*, and that both those have been so long printed, that every Man has had the opportunity of seeing this Falshood; I doubt not but it will easily be concluded, what belief ought to be given to any thing he has said, which may be either doubtful in the Proof, or obscure in the meaning, to those who are not particularly knowing to the Matters this Examiner has taken upon him to meddle with.

From these *sure Assertions*; he does just as he did from his *sure Proofs* in reckoning, draw divers as good Conclusions; and lest he should omit any occasion of shewing that great Duty and Respect he professes to his Majesty, he takes care in *Page 93*, to make a particular Exception against the Author of the *State*, for having justified the King's Honour in the 21st. *Page* of that *Stated Case*, by making appear that the King could have no design of getting the *French Money* for the purposes suggested against the Earl of *Danby*; for the Examiner, in the same *Page 93*, has laboured extremely to have that Argument of the Author's of the *State* to be taken for a very weak and false one, which vindicates the King so fully from so foul an Aspersion.

He then proceeds to that part of the Letter which says, That in Case the Conditions of the Peace shall be accepted, the King expects to have Six millions of *Livres* yearly for Three Years, &c. but says, that before he enters upon that Paragraph, he must separate the King from wrong or dishonour, and Explains that Separation, Pag. the 98th, with having separated the King from the Concern of that Matter. I confess he had not need to say so, because he says in the next, page 99, That it was a Project to let a Lease of Parliaments for three Tears; but whether he has done what he pretended for the King's Honour, I must leave the Reader to judge; when, if I durst have said in my Letter, that the King expects Six millions, &c. without the King's Order for saying so; yet certainly it could not have been in my Power alone, to have Leased out Parliaments; and as he says presently after, to have renewed those Leases; so that how it is possible to Render a King less, or how this Imputation can be designed against any body but the King himself, (although he would pretend some cover by doing it through my sides) I cannot imagine, nor is it possible to be understood otherwise.

I confess he seems to mitigate this Crime a little, by the only modest Expression he

has shewed through his whole Book, which is in a Paragraph, Pag. 89. and which he would fain have proved by a Syllogism; but finding the first part of it would not hold good, he says very modestly thus:

If this be a good Consequence, that to accept French Money, is to enslave the Nation; I hope it follows, the Sum of Six millions of Livres, &c. was for the same purpose; but himself acknowledges the Consequence not to be good; for he did not think the One hundred and twelve thousand five hundred Pounds, which he says was left in French Money, was for that purpose; nor have we found many great Sums which former Kings have received from that Nation to have been so applied or intended; and he cannot deny but his Majesty might have had great Sums from them if he pleased, which he has refused, and refused only because he would consent to no disadvantageous Terms of Peace for the Confederates; nor at the last did his Majesty ever consent to those terms upon which the present Peace was made, but on the contrary, the lowest Terms his Majesty did ever agree to propose to the French King were, to have had divers more Towns restored by him, both to the Emperor, and Spain, than are restored by the said Peace; and demanded an entire Restitution of the Duke of Lorraine to
that

that Dukedom ; as may be seen by those very Proposals, which were then sent to Mr. Montagu by Secretary Coventry, and without which his Majesty would not hearken to any Offers of their Money, nor (as is said in the said Letter) would he suffer it to be mentioned by his Ambassador ; nay, so much has his Majesty been injured in this Matter, that he needed not have wanted that Money which he so totally rejected, if he would but have given his consent to the Terms upon which the Peace was at last concluded at Nimiguen.

He follows that Charge of *Leasing Parliaments*, within two or three Paragraphs, with *laying Contradictions to the King's Charge*, but would impose that also upon the Author of the *State*, saying, *sure though he has been very bold with the King, yet he would not make him own Contradictions at the same time* ; and I do not find the said Author to have said one Word like it, though this Examiner hath done so with great freedom.

There is an Explanation in Print, * of my said Letter of the 25th of March to Mr. Montagu, together with two of his Letters, which will shew the cause why the Money-part was kept secret from the Secretaries, &c. Mr. Montagu having both undertaken to get the King Money, and having prayed the King in a Letter to himself, that it

* *Vide the Appendix.*

might be kept secret from all Men but me, who never sought that Trust at his hands.

I will therefore leave the rest of the Letter to that printed *Explanation*, and shall only observe two things more about it, which are the Close of the Examiners Discourse upon that subject, *Page 103*. One is the blame he lays upon me for affirming in a Speech in the House of Lords, *that I could produce the King's hand for the Letters made use of against me*; to which I shall only answer, I had the King's leave to do so, as well as his Authority for what I writ.

The other is an Expression of the Examiners, in the same Page, in answer to a Clause of the Author's of the *State* upon the said Letter; *viz. Sure there are few Masters that would expect Obedience from their Servants in unlawful things, and the Servants could less expect Protection unless their Masters were above the Law. The great Master of the Nation can give no more Protection, nor require more Obedience, than the Laws of God and Man allow.*

Now what does this imply (being said upon this Occasion) less than charging the King with Commanding an unlawful thing, if he did Command the writing of the said Letter, (which his Majesty himself has owned publicly;) and me for obeying his Majesty's Commands in what the Examiner calls unlawful?

To

To this I must answer, That I durst not take upon me so easily as this Examiner does, to judge whether that were unlawful, which the King thinks to be lawful; altho' it had been in a more doubtful Matter: But when the Subject Matter is about Peace and War, the Examiner himself acknowledges, pag. 101. that there is no question but the King may treat of Peace even in War declared; and yet in pag. 102. would insinuate that a Letter of that nature, and by the King's Command, and before War declared, should be understood to be about an unlawful Matter; for otherwise, by the Examiner's own Doctrine, the King's Commands on that Subject were legal, and my Obedience no Crime, but did deserve Protection.

When he has done with the Affairs of State, he is pleased to agree the Accusations about Sir Edmundbury Godfrey to be Libels against me, and that to draw Arguments of Guilt from relying on the King's Pardon would rather shew a desire to find a Crime than prove it: But for the King's part, how valid or good his Pardon is, his continued Duty and Respect to his Majesty makes him forbear to speak his Opinion; and I perceive also he takes it to be of such weight if he should, that he fears it might too much Anticipate a Parliament's Judgment; and upon the whole,

he concludes, (and I agree with him in that) That if he has made appear to be true, what he has said against me, my Pardon was certainly my best Defence; but being so apparently contrary to Truth, not only concerning me, but the King himself, I am sure he needs a Pardon much more than he deserves one, as I believe he is sensible, because he takes the safest course of all, which is to disguise himself; as well as he has done Truth? And if the Examiner was any of my Prosecutors, he cannot deny but that Malice has had too great a share, at least in his part of my Prosecution.

DANBT.

Sir ROBERT HOWARD'S
*Account of the State of His
Majesty's Revenue, as it was
left by the Earl of DANBY
at Lady-Day, 1679.*

In a LETTER to a Friend.

S I R,
TIS now some Months since I received your Commands, occasioned by my Lord of Danby's Answer to the Examiner of his Case, of which you desired me to give you as clear Satisfaction as I could, of the Matter of Fact, especially relating to the Difference of the Accompt, How the King's Revenue was left charg'd Lady-Day '79; which, as you justly say, depends on the large Deductions set down by my Lord of Danby, the Charge by Tallies being seemingly agreed to on both sides.

I was not only willing to obey your Commands, but also inclined of my self, to give the Publick some Account of this, especially finding my Name often used by his Lordship; but how ingenuously sometimes, I leave others to judge by the following Account.

I had before now finished this, but the Sickness of my nearest Relations, and my long continuance at Tunbridge Wells this Summer, 1780. hindered me from applying my self sooner to what I resolved upon. Besides, I could not till now obtain Certificates from such Places as were to be the sure Proofs of what I should assert, being careful to set down nothing, but what I had Vouched from the Office or Records, to which it related; nor desiring to meddle with Politick Disputes, nor to endeavour to support Reason or Matter of Fact, with undecent Expressions.

You must not therefore, Sir, expect any thing of Argument, nor anything in a digested Method; but as I meet the Particulars, to my best knowledge I will set down the Matter of Fact.

The first thing that occurs, is about the 27th of 1771, it is short upon the Lord Bury's Account, when he was Treasurer of the Navy (Page 33.) the Sum is mistaken 40^l. perhaps false Printed.

of the Earl of DANBY. 155

The Matter of Fact is, His Lordship left the Treasurer of the Navy's Place in 73. and the Sum of 2747 l. 11 s. 11 d. was forgiven him by a Privy Seal, bearing Date the 21st of February, 1676. as the Examiner says, but whether 'twas used by my Lord, or kept in Money by him for so long a time, his Lordship best knows.

The next thing is about the 18 Months Tax, which was payable in Six Quarterly Payments. The Matter of Fact is thus.

The first Quarter of that Tax, was charged by the Ld. Cliff. { 2000000 l. —
ford with the Sum of ————

The Second Quarter was charged with ———— { 1993367 l. —

And Signed, Clifford.

The Third Quarter was charged with ———— { 201000 l. —

And Signed, Osborne.

And are so entred in the Receipt of the Exchequer.

I had then the Honour to be Secretary to Sir Thomas Osborne, who was then Lord Treasurer, at it must needs follow when he signed this List of the Third Quarter, all which Original Lists are now in my hands.

The next thing is in the Sum which the last Three Quarters of this Tax brought clear into the Exchequer, all Charges deducted, which his Lordship affirms to be but 565498 l. 13 s. 10 d. ½ The

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The Matter of Fact is thus. By the Records of the Exchequer there appears to have been paid upon those Three Quarters, to the Day that my Lord Danby resigned the Treasurers Staff, the Sum of 58471 $l.$ 7 $s.$ 5 $d.$ so that the Mistake herein is 19219 $l.$ 13 $s.$ 6 $d.$ Besides, there was paid in the Name of Arrears, 7378 $l.$ 3 $s.$ 5 $d.$ the one half of which may be presum'd to be apply'd to this part of the Tax; and then the Mistake will appear to be 22908 $l.$ 15 $s.$ 3 $d.$ and this falls but little short of the Computation of the last Three Quarters in the Printed Copy, by the Examiner of the Condition of the Revenue, how it was left by my Lord Clifford, in which Paper 'tis said, not expressly, but about 600000 $l.$

And for the Sum of 21163 $l.$ 6 $s.$ 8 $d.$ which my Lord Danby says was charg'd on the Fourth Quarter of that Tax by my Lord Clifford, I know nothing of it; nor is it probable it should be so, since the Disposition of the Third Quarter was signed by him, as I have shewed before.

The next thing is about the Customs, and the Examiners Words quoted, where he says it will appear, *The Customs never yielded so much as in this Lord's days.*

The Matter of Fact is true, and I believe the Customs at that time were managed by most

most Excellent Commissioners; and that which did yet contribute more to it, was occasioned by the Wars abroad; insomuch, that the *English* were then the Carriers to most Parts of the World.

The next thing that occurs, is, That my Lord *Danby* says, the Examiner charges him, *With hindring Money from coming into the Exchequer, which was lent on the Fifth Part of the Excise, and diverting it to other Uses*; which my Lord says, is *Notoriously False*.

In this Place, it seems, that rather than my Lord *Danby* would lose the Advantage of so decent an Expression, of calling something notoriously false, he would Transpose some Words, leave out others, and slip over all the Matter of Fact, to make it like the Expression.

I find the Words in the Examiner are these, (Page 63.) *For when Money was lent on the Credit of the Fifth Part of Excise, he hindred it from coming in (which was often complained of publickly at the Exchequer by the Lenders of the Money) and diverted it to other Uses.*

The Words of the Examiner that are here Transpos'd, is perhaps to try to make it imply, that the Examiner does charge my Lord of *Danby* with hindring Money to be Lent on the Fifth Part of Excise; whereas 'tis

is plain enough, it was for hindring the Money, which was lent, to be repaid, according to the Act of Parliament. The Words left out are a whole Parenthesis, viz. (Which was often complain'd of publicly in the Exchequer by the Lenders of the Money.) If this had been in, it would have seem'd strange that the Lenders of the Money should complain they were hindred to Lend; and Money not Lent could not be diverted to other Uses.

The Matter of Fact that is shipt over, is set down by the Examiner, Page 61. where speaking of the Fifth Part of the Excise, his Words are these, and can hardly be plainer express'd:

For the full 200000 l. was lent in his time, and at his going out on the 25th of March, 1679, 83400 l. was left to pay, which sum was paid by these present Lords Commissioners.

This 200000 l. was Lent in his time, by Richard Kent and Charles Dancombe, Esquires, and there was left to pay at the time when he resigned the Treasurer's Staff, as appears by the Records of the Exchequer, 83400 l. which was since repaid by these present Lords Commissioners, and is discharg'd in the Exchequer.

This Sum was part of the Charge left on the Revenue, which the Examiner did not include; for the Accompt as it is set down

by

by him, was only of the Anticipations on the Revenue by Tally, and Repayment of Advance Money: But I shall take notice of this, together with other more considerable Sums, in another Place, when I come to consider of the Deductions my Lord Danby makes from the Charge. 'Tis likewise very true, that Mr. Charles Dancombe did often complain to me at the Exchequer, That my Lord Danby did hinder and divert the Money from being paid into the Exchequer, according as the Act of Parliament did direct; and left, Sir, you may doubt, whether if the Fifth Part of the Excise had been duly paid in, it would have been sufficient to have repaid the 200000 £ . the Matter of Fact stands thus.

Compute the Excise at 580000 l. per Annum which it certainly yielded, a Fifth Part of which, from the 24th of June, 1677, (at which time the Act commenced) to the 25th of March 79. being one Year and three Quarters, amounts to 203000 l. which is 3000 l. more than the Principal Money, towards payment of Interest; which in the whole was but 11920 l. 10 s. 4 d. and would yet have been much less, had the Fifth Part been duly paid into the Exchequer to have discharg'd the Loans. As for the Moneys said to be paid by private Letters and Vouchers, the Matter of Fact is thus. There

There must either be a *Great Seal* or a *Privy Seal* for the issuing of any Money in the Exchequer, tho' notwithstanding this General Discharge there: Many considerable Sums so issued, particularly those in the Name of *Secret Service*, are afterwards distributed to particular Persons, oft-times by *Private Letters or Directions*; and it yet more clearly appears by what hath been said in the foregoing Paragraph, that the 83400 *l.* of the Fifth Part of Excise so diverted from coming in, was applied by this Lord to other Uses, in the assistance of his Management, &c. by his particular *Directions*, and was allowed to the Commissioners of Excise upon their *Accompts*: For it cannot be made appear, that any *Great Seal* or *Privy Seal* ever diverted specially, any of this Money from the use it was appropriated to by Act of Parliament. And as for Tallies of Anticipation, at what time the Sums so charg'd are paid, or when the Interest is to commence, the Exchequer has no cognizance of it; and although the *Accompt* is made up by a Sworn Auditor, yet his Computations of Interest must arise from *Private Vouchers*, and the Lord Treasurer and Chancellor of the Exchequer must allow the *Accompt*, upon the Credit of *Private Vouchers*: For they can have no *Publick ones* from the Exchequer, there being no Record

cord of any *Real Issue* to vouch it there; and perhaps these present Lords Commissioners of the Treasury, having search'd into the nature of *Tallies of Anticipation*, and finding that by that way of disposing of Money, they never can have any Accompt, but what must be made up by *Private Credit*, they endeavour to bring all things to be Govern'd by the Records of the Exchequer: For what Moneys they are forced to borrow, they borrow upon Loans made in the Exchequer; and Mr. *Richard Kent* and Mr. *Charles Duncombe*, who have lent divers great Sums, have paid it into the Receipt of the Exchequer, where the Record will not only vouch the *Receipt*, but the *Issue*; and of all Moneys so lent, the Accompt of Interest is made up by the Records; and no Combination of Private Persons in this Method can defraud the King.

The next thing is about the *Poll-Bill*, and the *Eastland Merchants*, pag. 115. where my Lord *Danby* says, That Bill brought in to the Exchequer but 256223 *l.* 25. 4 *d.* The Matter of Fact, as appears by the Records of the Exchequer, is thus.

There was paid upon that Bill to the 25th of March 79, the Sum of 249404 *l.* 4 *s.* 8 *d.* and no more: But the Loans made upon the Credit of that Act amounted to 252900 *l.* which Sum my Lord *Dan-*

by had the whole disposition of ; and is what the Examiner charges him with.

The *Eastland* Merchants were promised ready Money for their Goods, yet were wholly left unsatisfied ; and these present Lords of the Treasury have upon their Accounts since stated, made them Assignments upon the *Hearth-Duty* to the Sum of 186585 *l.* 18 *s.* 9 *d.* and have actually performed what this Lord can only say for his best Excuse, that he intended to have done. And this is yet a farther Charge left on the Revenue, which the Examiner did not include.

By what has been said, in the foregoing Paragraph, it appears the *Weekly Certificates* in the Exchequer cannot be Proofs for Moneys dispos'd by *Tallies of Anticipation* : But my Lord *Danby* has been pleas'd to say the Cause is, That he has had out of the Exchequer some of those *Certificates* which have not been true, and that to the Mistake of Ten or Twelve Thousand Pounds in one Week. I cannot imagine what my Lord means by this ; for I suppose, had it been really so, I have not had so great a share in his Lordship's Favour, but that he would have made it appear in a more proper place, if he could have made good any such thing as is pretended.

The

The next thing is about the Argument concerning an Account of the *Pells* from *Easter 73*, to *March 79*, amounting to Eight Millions, &c. which my Lord *Danby* (page 120.) has made to be Ten Millions and more. The Repetition of the former Sum I imagine is false printed in the Examiner.

I shall not meddle with their Arguments, but agree with my Lord of *Danby*, that the 200000 *l.* on the Fifth part of the Excise is twice reckon'd, it being included in the *Act for disbanding the Army*. And I do also believe some part of that *Tax* was not paid in his Time: But not finding any Inferences to be drawn from it, I have not given my self the Trouble to Examine it: Since if the *Ordinary Revenue*, together with the *Accidental Taxes*, have not amounted to above Ten Millions, as this Lord alledges has been Publickly Accounted for at the *Pells* in that time; it will necessarily follow that the Remainder must be an Anticipation upon the Revenue; which will be best determined by the Charge he left upon it *Lady-day 79*, in the Matter of Fact of which much depends; and I will be as clear as I can, when I come to it.

The next thing is about *Secret Service*. My Lord *Danby* is pleased to say, page 123. the just Sum paid in Three Years compleat was 252467 *l.* But by the Records of the

Exchequer I find paid in Three Years, viz. from *Lady-day* 76, to *Lady-day* 79, the Sum of 294916 *l.* 11 *s.* 4 *d.* whereof in Mr. *Berry's* Name indeed 252467 *l.* 10 *s.* 5 *d.* besides the further Sum of 14640 *l.* as should be privately directed to be distributed in New-Years-Gifts by Mr. *Berry's* hands; which Sum in the Half Year's Account of the Exchequer is placed under the Head of *Secret Service*, there being no other proper Head for it, according to the Methods of the Exchequer. This Sum being then added to the former, will make the Total of *Secret Service* for those Three Years to amount to 309556 *l.* 11 *s.* 4 *d.*

As to the Payment of my Lord Treasurer's Pension of 8000 *l.* per Annum, 'twas never included in the Accounts of *Secret Service* for those Three Years, which I suppose the Examiner must mean: For it was alter'd by a Privy Seal bearing date the 19th of July 1676, to express the particular Service of that Sum; the first Payment to commence from *Christmas* 75. But neither when the Service was expressed, as well as before, did my Lord Treasurer ever pay Fees for his Salary, or the Chancellor of the Exchequer pay any for his, as the Examiner rightly affirms.

The next thing is in the State of the Revenue left by my Lord Clifford. The Matter of Fact is thus. My

of the Earl of DANBY. 165

My Lord Clifford made a State of the Revenue the 10th day of June 1673, as follows; viz.

The Customs were charg'd with about 153000 *l.* for the Navy, Ordnance, &c. and I hope this last Fleet will go near to clear it.

Almost Two Thirds of the Rents of the Excise for the Quarter due at *Michaelmas* next, is charg'd for the Forces, Cofferer, &c.

All the Forces are provided for, until the 25th of July, and the last new additional Levies till *Michaelmas* next.

The Household is provided for until *Lady-day* last.

The Treasurer of the Chamber until *Christmas* last, except the Old Arrear in the late Lord Treasurer's time.

The Office of the Works until *Lady-day* last.

The Great Wardrobe hath been supply'd from time to time, as their most pressing Occasions have required.

Tangier is Weekly provided for on the Customs.

The Ordnance hath had as much Yearly in proportion as in the former *Dutch War*; but by reason that that Office hath not kept the Accounts, I cannot justly say how that Office stands.

The Victualer is paid within a small matter, except the last Agreement for the Land-Men.

The first Three Quarters of the Tax given by Parliament are assign'd; the Three last are untouch'd; which amount to about 600000 *l*.

There will be in *October* and *November*, for Payment of the Fleet and Yards, in Ready Money, these Three following Sums;

From the Advance of the Excise, 150000 *l*.

From the *French Money*, 112500 *l*.

Upon the 3 Quarters of the Subsidy, 080000 *l*.

The Chimney-Money and Law-Bill are left free to be charg'd as there shall be occasion.

The Original of this *Paper* was drawn by Sir *Philip Lloyd*, by my Lord *Clifford's* Directions; of which I have had a Copy by me ever since that time. I cannot say whose Hand it is directly; but I can affirm this to be a true Copy of it; and it was so acknowledg'd by Sir *Philip Lloyd*, to a Gentleman that I sent to shew it him; but denied that *Paper* to be his Hand.

I did after this, about the 21st of *June*, make some further *Examinations* for the Service of my Lord *Danby*, then Lord
Trea-

of the *Earl of* DANBY. 167

Treasurer; and did presume the Increase of Charge on the Customs by that time was 92905 *l.* 17 *s.* 8 *d.* which if reckon'd together with the former Charge, makes up the Sum of 245905 *l.* 17 *s.* 8 *d.* But in the same Examination I gave my Lord, the Excise agreed very near with the Sum in the Copy before-recited.

I did also present the *Hearth-Duty* to be charg'd with 22318 *l.* 11 *s.* 0 *d.*; but with an explain'd it in these words:

This Charge may be paid by the *Arrears of Hearth-Money* due at *Lady-day* last; and at *Michaelmas* there will be Half a Year due to the *King*, which amounts to 67500 *l.* which at *Michaelmas* will begin to be paid by about 2500 *l.* per Week; so that the Variation herein will amount but to about 93000 *l.* in case my Lord *Danby* is pleased to give my Calculation the greatest Credit.

I do further acknowledge, in that *Paper* I presented my Opinion, that the Customs would not have paid its Charge at the *Christmas* following, probably by 40000 *l.* But it seems the good Management of the Customs, and the Fulness of Trade, gave Mr. Mounteney occasion to write this Letter to me, which I have now by me.

I Have a List sign'd by the late Lord Treasurer Clifford, and confirm'd by the present Lord Treasurer; the said List being wholly paid, only 8400 l. payable to the Treasurer of the Navy.

I do hear there are several Talleys struck on the Customs, but I know not of what Value, nor to whom payable. I understand the Persons have made their Application to my Lord Treasurer, and that my Lord intends to make a new List: Which is all I can say to this Affair.

Sir, Your very Humble Servant,

Ri. Mounteney.
Custom-House Lord.

10. Novemb. 73.

And it is very true I was then Auditor of the Receipt, and not Secretary to his Lordship at that time.

In the same Paper before-mentioned, I likewise acknowledge to have given a short State of the Revenue, and the Expences for that Year; wherein at a General Guess I calculated by way of Debtor and Creditor, that the Expences would exceed the Ordinary Income by One million one hundred sixty three thousand four hundred Pounds.

I could

I could not but admire at the ingenious Use my Lord Danby makes of what I then presented: For I believe no unprejudic'd Man could imagine that I should give such a State, as that so great a Revenue as the King then had, should not supply the Ordinary Charges of the Government, by above a Million in one Year. But my Lord Danby was pleas'd to pick out of the Paper only such words as he thought might be useful to his Purpose: For had he express'd the true Cause I gave of such a State, (which was the Time of the War) the matter had been explain'd; the Expence of the War being stated by the Commissioners of the Navy to amount in one Year to the Sum of 1400000 l.

And in the said Paper I also added in the very next words, another Calculation for the Ensuing Year 74, where my Lord Danby might have likewise found, if he had pleas'd, these words.

The State for the ensuing Year 74, if in Peace will be

Debtor by Expence, Creditor by Income,

	1167400.	1386500.
To Balance,	219100.	
	1386500.	

So

170 MEMOIRS, &c.

So that by a like *Calculation*, in Times of Peace the *Tearly Income* would exceed the *Expence* by Two hundred and nineteen thousand one hundred Pounds.

I will not make any further *Reflections* on these things, but keep only to my *Rule of Matter of Fact*.

The last thing that occurs, is the *State of the Revenue*, how it was left *Charg'd* by my Lord of *Danby* at *Lady-day* 79. 'Tis set down by the *Examiner*, and not denied by my Lord of *Danby* (*page* 135.) to amount to the Sum of 1485570 *l.* 16 *s.* 4 *d.* excepting one *Talley* of Mr. *Montagu's* of 2443 *l.* which he says was paid in his Time.

From this Charge my Lord *Danby* deducts these following *Particulars* viz.

For the Advance on the Excise ————— 270000

For Advance on the Hearth-Duty ————— 150000

To be discharg'd by Orders to the Commissioners of Excise on the first Act for disbanding the Army, &c. ————— 101000

More by Tallies on the Surplus of the Excise for 30000 *l.* and 99000 *l.* being no Charge upon the Rent, unless the Surplus fail, which is not likely ————— 129000

More

of the *Part* of DANBY. 171

More by Tallies which were to
pay the Forces from *Lady-*
day 79. forwards to the first
of *July*, which was 97 Days
beyond my time ;

059588

More by Tallies on the Cu-
stoms made use of to carry on
the Service of the Navy and
Ordnance beyond the said
Lady-Day, 1679

035000

More by Tallies struck for Pen-
sions upon the two last Quar-
ters of the Excise, viz. *Christ-*
mas 78. and *Lady-day* 79. for
payment of which, Money
was left in the hands of the
Commissioners of Excise a-
bout

093000

More by Tallies upon the Cu-
stoms restored for Tin, which
was deposited in Mr. *Kent's*
hands

015000

More by Tallies on the Customs,
accounted by the Examiner to
be unpaid to Mr. *Montagu*,
which were paid in my time

002342

Total 794930

Thus

172 MEMOIRS, &c.

Thus have I set down the *Charge* as it is made up by the Examiner, as also particularly the Deductions out of that *Charge*, as they are set down by my Lord *Danby*,

The Examiner's Charge is 1485570 16 4
My Lord *Danby's* De- }
ductions are ————— } 794930

So that by that Lord's }
Computation, the Debt }
on the Revenue *Lady-day* } 690640 16 4
79, amounted to no more }
than ————— }

c. The Examination of these Particulars must determine the *true State* of the Charge left on the King's Revenue; which I shall endeavour to do with as much Candor and Clearness as lies in my power. But before I proceed to take the Particulars in their Order, I must take notice of one small *Mistake* of my Lord *Danby's*; for he reckons the *Advance* on the Excise 20000*l.* more than really it was, which increases his Deductions: For the *Advance* was but 250000*l.* and is so set down by the Examiner. But upon the Farm of the Excise let the 13th of *March* 167⁸, which was a little before my Lord *Danby* left the Staff, the *Advance* indeed was 270000*l.* of which Sum his Lordship only dispos'd of 58352*l.* 9*s.* 6*d.* which

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which being charg'd by Tally, was included by the Examiner, in the general Account of the Charge on the Excise by Tallies.

But this *Mistake* is not of much moment, since I presume the Deduction it self is by no means allowable.

I shall take the *Particulars* in the same Order as they are set down by my Lord Danby. The first Two are of the same nature, viz. the

270000 l. advanced on the Excise; and the 150000 l. advanced on the Hearth-Duty.

I cannot imagine why these should not be look'd upon as so much of the Debt left upon the Revenue: It seems as if it were implied, that it was never to be paid again; but his Lordship's Reason for his Opinion is, *That those Sums are a Security only for the Rent of those great Branches; which must always be done, if his Majesty were in the most plentiful Condition of his Exchequer.*

In Answer to this, I would in the first place ask his Lordship, What Security is now given for the Rent of the Customs? And what Prejudice it would be to his Majesty's Revenue, if these Two Branches of the Excise and Hearth-Duty were managed as the Customs are, and not Farm'd? And then

then there were no necessity of such a *Security* (as his Lordship calls it) for the Payment of the Rent.

As to my own Opinion, I cannot but think, that these Two *Branches*, managed as the *Customs* are, might be improved above what they now yield, as well as the *Customs* now exceed whatever they made to the King when they were Farm'd, and whilst they also had an Anticipation upon them by way of *Security*: And perhaps if this *Advance-Money* (that my Lord Danby would not have reckon'd as part of the Debt) were not in the way, they might at this time be managed in the like manner with the *Customs*, with equal Advantage to the King's Affairs, and prevent many Frauds and Bargains that are this way shelter'd.

And upon these several accounts this *Advance-Money* may very properly be called part of the Debt:

First, Because that until it is cleared, his Majesty is not at liberty to manage those Two *Branches* to the best Value.

Secondly, The *Matter of Fact* determines the Argument; for every Quarter the Sum of 22000 *l.* is really paid to those that advanced upon the *Excise*, and 17500 *l.* every Half Year to the Farmers that advanced upon the *Hearth-Duty*; which certainly makes those Two *Branches*, the one now

Let for 460000 *l.* per Annum, and the other for 160000 *l.* per Annum, so much less worth to the King every Year, as 88000 *l.* and 35000 *l.* amounts to: So that I presume I may justly conclude, this *Advance-Money* must, of necessity be accounted as a Debt left upon the Revenue; unless my Lord of Danby can demonstrate, that while those Sums are repaying the *Advance* to those that lent the Money, the King does not receive the less for it.

The next Deduction, according to my Lord Danby's placing it, is 101000 *l.* that was to be discharged by Orders to the Commissioners of Excise, on the first Act for Disbanding. This 101000 *l.* and the 99000 *l.* mentioned in the next Deduction, amounting to the Sum of 200000 *l.* was double Security in the Hands of Sir John James and Partners, to enable them to carry on the Payments that should be charg'd on the Excise: And in this perplex'd Condition the present Lords' Commissioners of the Treasury found it at Lady-day 79.

The 99000 *l.* will receive its proper Answer in the next Paragraph; and this 101000 *l.* to be charg'd by Orders, did not come in till some Months after, by the Tax on which it was assign'd: Nor was this Sum comprehended in the Examiner's Charge, and therefore ought not to be deducted

ducted out of it : So that without either *Malice or Mistake*, the Charge on the Revenue was as it is set down by the Examiner, (notwithstanding this Pretence, among others, of a Deduction.)

The next Deduction, claim'd by my Lord of Danby, is 129000 l. on the Surplus of the Excise ; which my Lord would have to be no Charge on the Revenue, unless the Surplus fail, which is not likely.

These are my Lord's Words ; but not intelligible by me, while I take the *Surplus* and the *Rent both*, to be part of the *King's Revenue* : So that in my Opinion, if the *Surplus* was charg'd with this Sum, the *Revenue* was also : And sure my Lord of Danby was of the same Opinion a little before his going out ; for he had almost compleated a Bargain, to part with the King's Title to the *Surplus*, for a considerable Sum of Money : And I am sure it hath been esteem'd by the present Lords Commissioners as a Part of the *Revenue*, and so considerable a Part, as hath sometimes come in very seasonably, for many important Occasions.

But to make this yet more clear by *Matter of Fact*, 'will be proper to shew the *King's Title to the Surplus* by this short Account, viz.

The Excise, formerly let in *absolute Farm*, was now granted to Mr. George Dashwood,
and

and others for Three Years, under a certain Rent, with several Limitations and Restrictions for the King's Advantage;

viz.

1. The King, had a Power to make Orders for the better regulating the Farmers and their Officers.

2. The Commissioners were obliged to keep fair Books of Accounts, of all the Duties of Excise by them received, and upon Oath to give up such Books.

3. A certain Sum was consented to, for the Yearly Salaries and Allowances to the Sub-Collectors, and other inferior Officers; and in case less than that Sum should be expended, the Overplus was to be accounted and paid to the King.

4. That at the Determination of the said Term, in case the whole Duty of Excise made more than the reserv'd Rent payable by the Patent; they the said *George Dashwood* and others were to have a further Allowance for their Care or Management, proportionable to the Overplus; and the Residue of the said Overplus to be paid to the Commissioners of Excise, for his Majesty's Use.

These Conditions perhaps had two Respects; one, that the Excise was better paid
N when

when Collected for the King, than to *absolute Farmers*; the other, to try to Improve it. But however, it appears clearly by the whole, that the King had as much Right to the *Surplus*, as the *Real Rent*. And since all Profits arising by the Duty of Excise, are alike the King's *Money and Revenue*; to allow this a *Deduction*, were likewise to agree, that the *Talleys* so struck upon the *Surplus*, were never to be paid again.

I may therefore presume to affirm confidently, that whatever either of the *Rent* or *Surplus* had any Charge upon it, may very justly be esteemed as so much *Debt* left on the *Revenue*. And thus 'tis evident, that of these Three first Particulars, (by much the most considerable part of the *Deductions*) there is no Colour for allowing the least Tittle of them.

The next *Deduction* claim'd by my Lord Danby, is the Sum of 59588 l. which was charg'd by *Talleys* to pay the *Forces* from Lady-day 79, forwards to the first of July, being 97 days beyond my Lord Danby's time.

This Particular I have Examined with the Pay-master of the *Forces*, and 'tis acknowledged by him to be very true. This *Deduction* therefore ought to be allowed; and when I sum up the whole, I will accordingly subtract it.

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The next Deduction is for Tallies on the Customs, made use of to carry on the Service of the Navy and Ordnance beyond the said Lady-day 79, amounting to 35000 l.

Concerning this Particular, I have received a Certificate from the Office of the Ordnance, very contrary to what is asserted: For they say, 'That the late Master of the Ordnance did obtain from my Lord of Danby, when Lord Treasurer, something like a Settlement; but only by a Verbal Promise of 41000 l. per annum, to be constantly paid out of the Customs by 800 l. per Week, for defraying the ordinary Expence of the Office, and to commence from Midsummer 1677.

'That this continued to be paid but till Feb. 10. 77. being 33 Weeks, amounting at that rate to 26400 l. which yet was not fully paid before the 13th of May 1678.

'So that at Lady-day 1679, the Office was in Arrear of this Allowance no less than 68 Weeks, that is, 46400 l. and from Lady-day 79, to Midsummer last 1680, being one Year and a Quarter, 52000 l. in tota 98400 l.

'Whereof received, March 19. 1678. by a Talley struck upon the Customs, by order of the late Lord Treasurer, 10000 l. for the ordinary Expence of the said Of-

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Office for one Quarter, ending at *Midsummer* 1678.

More at several Times, by order of the Right Honourable the Lords Commissioners of his Majesty's Treasury, for the ordinary Expence thereof till the 24th of June 1680. the Sum of 31414 l. 6 s. 3½ d. in toto 31414 l. 6 s. 3½ d.

So that then, viz. at *Midsummer* last past, supposing the said Allowance of 800 l. per Week to be continued to this Office, there was in Arrear the Sum of 66985 l. 13 s. 8½ d.

That no Talleys struck upon the Customs before *Lady-Day*, were applicable to any Service done since that Time.

Office of Ordnance,

Signed,

9. Septemb. 1680.

Jonas Moore.

Edw. Sherburne.

Edw. Conyers.

G. Wharton.

These are the Words of the Certificate; which instead of allowing any such thing as a Provision for carrying on the Service of the Navy and Ordnance beyond *Lady-day* 79, it Charges an Arrear of 36000 l. (allowing the Tally of 10000 l. struck the 19th of March 78, as present Payment.) left at that time, instead of the Sum of 35000 l. to carry

carry it on beyond that time. This, as to the Ordinance seems a strange Mistake; and what relates to the Navy will appear as unlucky, when I come to give the Account of that Particular, in the Charge that is to be added.

The next Deduction is for Talleys struck for Pensions upon the Two last Quarters of the Excise, viz. Christmas 78, and Lady-day 79, about the Sum of 33000 l. for Payment of which, Money was left in the Hands of the Commissioners of Excise.

This Particular could be determined no way properly, but by the Commissioners of Excise; from whom I have received a Certificate, sent the 15th of September 1680. viz.

That all Moneys received by the late Commissioners of Excise, are by them disburs'd and accounted for, excepting what is remaining at the Foot of their Account: And that it doth not appear unto us, that any such Sum as 33000 l. was at any time left in the said Commissioners Hands for Payment of Pensions.

Signed,

Excise-Office.

Den. Ashburnham,

Rob. Huntington.

Cha. Davenant.

N 3

These

These Two last Deductions therefore, cannot be allowed, unless my Lord of Danby could likewise find out a *Notorious Falshood* in the Certificates of the Offices.

The next Deduction is for *Tollays* upon the Customs restored for Tin, which was deposited in Mr. Kent's Hands, amounting to the Sum of 15000 *l*.

I have obtain'd from Mr. Kent and Mr. Duncombe, the Account of this Tin, that I may be as clear as I can in Matter of Fact.

The Account sent me was thus, by way of Debtor and Creditor,

Tin-Account Dr.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
1678.			
Sept. 11. To Money lent	31220	17	
79: Aug. 13. To so much allowed to Ch. Duncombe Esq; & Com. for Commission for selling and managing the Tin,	711	7	
13. To Money paid to the present Lords of the Treas.	4395	3	6
	36327	7	6

Tin-

of the Earl of DANBY. 183

The Deduction is as follows

	l.	s.	d.
1679.1			
May 13. By Talleys on the Customs,	15000		
Aug. 13. By the Product of the Sale of the Tin,	26327	7	6
	36327	7	6

By which Account it appears, that instead of 15000 l. claim'd by my Lord of *Darby*, there is but 4395 l. 3 s. 6 d. to be allowed as a Deduction, which I shall likewise *subtract*, when I come to sum up the whole.

The next and last Deduction is for Tallies on the Customs, accounted by the Examiner to be unpaid, amounting to 2342 l. which were paid (as my Lord says) in his time.

I sent to Mr. Kent, the Cashier of the Customs, concerning this Particular, who sent me word he could not find any such Tallies: However, by reason I have no direct Certificate, I will rather admit it as a Deduction, than dispute it.

The Deductions then to be allowed are,

1. The Tallies to pay the Forces forwards to the First of July,	59588	
2. The Balance of the Tin Account,	4395	3 6
3. Mr. Montagu's Tallies,	2342	
	66325	3 6

The true State of all I then conceive to be thus :

The Examiner's Charge was,	1485570	
From which subtracting the Deductions, which are	66325	3 6

The Remaining Charge will be	1419244	16 6
------------------------------	---------	------

And that the *Matter of Fact* may yet more clearly appear, how the King's Revenue stood Charged when my Lord Danby left it, I must also add Three other Particulars,

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particulars, amounting to 655634 l. 19 s. 6 d.
(of which Sum the present Lords of the
Treasury have paid and satisfied Four hun-
dred seventy eight thousand six hundred forty
six Pounds, Eighteen Shillings, Sixpence,
viz.,

1. The Moneys left un-
paid on the Fifth Part of } 83400
the Excise, which was

2. The Debt to the East-
land Merchants, paid by } 186585 19 6
Talley on the Hearth-
Money, which was

3. Upon the Return of
Sir John Narborough's Fleet
(which had been a long
time at Sea) there became
a great Debt upon the Na-
vy, which being computed
to Lady-day 79, amounted
to 385648 l. 1 s. 0 d. The
particular Account I had
in two Certificates from
the Navy-Office, of
which Sum these present
Lords of the Treasury

have

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have satisfied the Sum
of 208660*l*. 18*s*. 9*d*.

Ships yet unpaid in
the List, amounting
to 60273*l*. 15*s*. 0*d*.

268934*l*. 13*s*. 9*d*.

And the remaining Sum
to compleat the Debt } 385648 19 9
above-mentioned, being

1167144*l*. 6*s*. 0*d*.

is supposed either to be
paid by Tickets before the
25th of March 79, or is
still unpaid.

The Total of these three }
Particulars, 655634 19 6

To which adding the
Charge on the Revenue }
before computed, amount- } 1419244 16 6
ing to

2074879 16

The Total of the whole Charge left on
the Revenue at *Lady-day* 79, by this Ac-
count, appears to be, *Two Millions seventy*
four thousand eight hundred seventy nine
Pounds, sixteen Shillings. And

And as to the Proof of all these Three Particulars;

The First, concerning the Fifth Part of the Excise;

The Second, concerning the *Eastland* Merchants;

The *Records of the Exchequer* will be the Evidence. And for

The Third Particular, concerning the Navy and Fleet, under the Command of Sir *John Narborough*,

The Charge is according to the Two *Certificates* before-mentioned, which I have now by me, together with the others; and am ready to shew them to any that doubts the Truth of the Particulars.

And these present Lords of the Treasury will be the truest Judges whether these Charges are justly Computed; to whom I submit it; and shall gladly acknowledge my Error, if they do not feel the *Matter of fact* to be too true.

There is nothing more remains, as I see, that concerns Me, or *Matter of Fact*, but a Paper delivered by Me, to his Majesty, the 5th of *March* 75. which was almost Three Years after this Lord's having the *Staff*.

I have not the Copy by me; but I remember I delivered such a Paper to the King, and did it out of a Sense of Duty;
to

to offer to him, whether He in his great Prudence would think fit to make some *Suspensions*, and upon that declare Payment of the *Residue*, which the Revenue would not bear.

I do believe, that as near as I could then guess, the *Income* would be short of the *proportion'd Expence*, by the Sum mentioned by my Lord Danby, Pag. 27. of 519143 *l.* 1 *s.* 6 *d.* which only shews the *Matter of Fact*, how much the *Revenue* was impair'd, from June 73. to March 75.

And the *State of it*, as it is here now represented, shews as well, how much it was impair'd from March 75. to Lady-day 79. And His Majesty I doubt not but remembers, that I gave him often Notice of my Apprehensions, how much the Revenue was like to suffer, by the way of *Management*; and therefore my *Proposition* to the King, to find a *Weekly Credit*, was to help to pay off all Tallies, and to bring the *Government of the King's Revenue by Specie into the Exchequer*; in which those *Frauds* that had been committed, would infallibly have been avoided. Which is quite contrary to what my Lord Danby mentions, p. 24. of putting the *Three great Branches into the hands of Undertakers*; and a Thing I never thought of. But the *Propositions* I presented to the King, I offered to prove, and could have

have made good, if he had thought it for His Service; which I can make appear by Men of the greatest Quality, if required of me; and to evidence that 'twas my constant Judgment, *that Tallies of Anticipation would be the Ruin of the Revenue*, I presented to my Lord Danby at Windsor, not long after he received the Staff, my Thoughts of it; and how it was at that time in his Lordship's Power, to place it in the *right way of Management*; upon which he commanded me to put it in Writing, which accordingly I did; and in that Paper there appeared no Difficulty, but upon the Debt due to Sir Stephen Fox by Tallies on the Excise, to whom I was commanded by his Lordship to impart the Scheme; who seeing it for the *King's Service*, freely consented to receive his Debt by the Week, by which means the *Revenue* might have been reduc'd to that way of *Management*, as would have hinder'd many Disadvantages to the *King*, which since that has happened.

I only give this short Account, to shew what my Judgment ever was concerning *Tallies of Anticipation*, and am at last extremely satisfied, to see my constantly declared Opinion approved by the Proceedings of these present Lords Commissioners of the Treasury, who use their Endeavours

190 MEMOIRS, &c.

to bring the *King's Revenue* as fast as they can, to be Govern'd by Record, according to the *Rules* and *Methods* of the *Exchequer*, which is the *Common Law* of England.

Thus, Sir, I have endeavour'd to be so clear in what I have done, that it may admit no Contradiction; at least, I am not Conscious to my self, that I have not in every thing acknowledged *Truth* where it appeared, nor have denied or asserted any thing, but what I had Proofs to justify me in; and hope it may give that Satisfaction which is desired by you, and intended by,

SIR,

Your most Humble and

Obedt. 13.

1680.

Obedient Servant

R. HOWARD.

of the Earl of DANBY. 191

The Earl of DANBY's
Answer to Sir ROBERT
HOWARD.

I Know not whether I should find Fault,
or thank Sir Robert Howard, for his Ac-
count of The State of his Majesty's Reve-
nue, as it was left at Lady-day 1679. Be-
cause upon Examination it will appear
to have done me no Injury; and has shew-
ed the Examiner, That there was nothing
to be said in Justification of any other part
of his Book, but only what concerned the
State of the Revenue, as it was found by
Me at June 1673, and left at Lady-day
1679.

Sir Robert does likewise shew how he
detests such Scurrilous Language as the
Examiner is full of. For in my Answer, I
have but once called a certain Untruth, a
notorious Falshood, and Sir Robert seems
to be much offended at the Expression.

He shews himself also far more ingenu-
ous than the Examiner was; for he con-
fesses many Errors, altho' the Examiner be
very

very positive in the Defence of them; viz. *In his absolute affirming that my Salary was never included in Secret Service. In his double charging of 200000 l. on the one Fifth of the Excise. And in saying, that the whole Tax upon the first Act for Disbanding the Army, was come into the Exchequer in my Time, &c.* which Sir Robert is so much my Friend as to acknowledge he believes to be otherwise; altho' he confesses, *that he has not given himself the trouble to examine it*; And in the same Page he says, *he shall not meddle with their Arguments* (meaning, I suppose, the Examiner's Arguments and mine;) so as I perceive we must stand upon our own Legs for what either of us have said; he being resolved *only to give the Publick an Account how the Revenue was left at Lady-day 1679, and not to meddle with Politick Disputes, nor Matters of State*; which fills the greater number of Folio's in the Examiner's Book.

Sir Robert does also know, that if all the Matters of Fact contained in his Account were true, it could be no Crime in me, that the Revenue was more or less in Debt at my leaving it; unless I had either lessen'd the Income of the Revenue, or not truly answered the whole Income according to his Majesty's Directions; or had diverted any of the Moneys given by Parliament,

Parliament, to other Uses than were limited by the several Acts: And he does not pretend to say any thing either as to the lessening, or not answering the whole Revenue; (but on the contrary, confesses the Revenue to be increased in my Time:) And for diverting any part thereof, he speaks as if some others did complain to him of it; but I do not understand that he directly charges any such thing himself; nor can any Man do it, but with great Untruth. Insomuch, that were it not for some Expressions not so becoming a Man's own Secretary to be guilty of, and that the Time of Publishing his Account hath not been so generously taken, as some Men of Honour would have done, I should not only have forgiven him, but have thanked Sir Robert for the Opportunity of clearing the Integrity of my Management in the Treasury, however I may have been wanting in those Abilities which God hath given to himself above other Men: And he ought not to blame me, but my Understanding, if I could not always comprehend such Schemes and Projects of his concerning the Revenue, whereof I have some still in my Custody, which I must acknowledge I do not yet understand, any more than I did when I first received them.



That

That which makes me complain of the Time *Sir Robert* has taken to divulge himself, is, Because it may be too reasonably suspected, that those Reasons he gives for having deferred it so many Months, are not so probable, as some other Reasons may be, which he does not think fit to give; because *if his Relations were not well at Tunbridge, yet it seems he was well himself*: And how a Man whose Office and Dwelling is in the Exchequer, and who hath so great a Controul over it, *could want either Records or Certificates from other Offices*, so long as he hath taken to satisfy his Friend's Enquiry, is not very likely.

But these Reasons were likely: *First*, That such an Account as this (tho I dare say understood by very few that read it) would make a great Noise against a Man in my Condition, in the time of a Parliament's Sitting. *Secondly*, That in probability it would be impossible for me, under a Confinement, (and who am without Power to send for any Records or Papers, and who am now without the Help of those Officers who acted then under me) to give any full Answer (during the Sitting of Parliament) to what he has found so many Months little enough to do, who had all the Leisure and Helps for it he could desire. *Thirdly*, That being under Accusati-
ons

ons in Parliament, I might probably be called upon to answer them at this time; So as I should not only want Leisure, but in all likelihood I could not have my Thoughts free to attend to such a matter as this, when I had so much greater Concerns upon my Hands. And *Lastly*, Tho it contain nothing of Criminal in it; yet it might be hoped that any small Weight which could not receive an Answer in due time, might contribute to the heightning of Mens ill Opinion against one he thought not yet loaded enough with false Aspersions.

If this was the Design, (as I have too much reason to believe, both from what I have said, and because otherwise I do not believe he would have troubled himself to have writ what he knows will be found to have so many Mistakes) I do acknowledge that he has gained so much of his Design, that I shall not be able, under my Circumstances, to give so full an Answer at present, as I hope to do hereafter, if my Condition will permit: And I doubt not but to make it appear, that I have said nothing in my first Answer, but what I have still good Reason to believe true.

In the mean time I shall endeavour to shew the Falacies which are in many parts of his Account: The wrong State of the

Questions to such Officers from whence he hath got Certificates: So as tho the Certificates may be true, yet they are not properly applied by Sir Robert: And lastly, the disingenuous Swelling of the Account, to make a Noise to the World of a great Debt (besides the Anticipations) which will appear to be no more any Ground for accusing my Management, than it hath been of my Predecessors, and must be of those who succeed me in the Treasury. As the Examiner I doubt not but knew very well, when he made no mention of it in the Range of his Malice; who made appear sufficiently, that he would not have spared those, nor any other Particulars, to have loaded his Charge, but that he knew how easily they would be answer'd.

As to the falacious Glosses (of which he makes great Use throughout) he begins p. 155. *That the Third Quarter of the Eighteen Months Tax was sign'd (Osborne);* and hopes from thence to have it inferr'd, that I had the Disposal of some of the Money of that Quarter; which I can prove that himself knows the contrary (as well as that I never was *Lord Treasurer* under the Title of Sir *Thomas Osborne*): And from the same Reason of my having sign'd that Quarter (which was done at the Request of my Lord *Clifford*, and for Satisfac-

tion

tion of the Creditors on that Quarter, that they should not be postpon'd by my coming to the Treasury,) he would have it believ'd, that the 21163 *l.* 6 *s.* 8 *d.* said in my Book to be charged by my Lord Clifford on the Fourth Quarter of that Tax, was not so : But I must acknowledge he insists not much upon that matter ; but ends that Paragraph, p. 156. with a Confession, *That he knows nothing of it.*

His next Pretence is, That upon the Three last Quarters of that Tax, there appears to have been paid into the Exchequer the Sum of 584718 *l.* 7 *s.* 5 *d.* which I call but 565498 *l.* 13 *s.* 10 *d.* ½, all the Charges being deducted (as the forgiving any Receivers, or their Securities, &c.) which is notwithstanding made received in the Exchequer, as if it came to be disposable Money to the King's Use. And altho I cannot now have the sight of Originals, I have great Confidence that the Certificates I received of that matter before my leaving the Staff, will prove my Computations to be true, when all the Circumstances are examin'd.

In Pag. 157, 8, and part of 79, he takes great Pains to show, *that I did hinder and divert the Money on the One Fifth of the Excise, from being paid into the Exchequer, as the Act of Parliament did direct ;*

and says, *Mr. Duncombe the Goldsmith did often complain to him of it.* The truth is, I have so often heard *Mr. Duncombe* complain of *Sir Robert* himself, that he should not for his own sake much regard his Complaints; But in this matter it happen'd, that the 200000 *l.* being Lent by *Mr. Kent* and *Mr. Duncombe*; and *Mr. Kent* then being Receiver of the Customs, from whom *Sir John James*, *Major Huntingdon*, &c. (who were then Paymasters of the Army) were to receive 2000 *l.* a Week out of the Customs; and the said *Sir John James*, *Major Huntingdon*, &c. being Receivers of the Excise, so as the One Fifth was to be paid by them to the said *Mr. Kent* and *Mr. Duncombe*; an Agreement was made, or pretended to be made amongst themselves, (and without any Direction of mine,) for the Accommodation of the King's Service, by *Mr. Kent* and *Mr. Duncombe's* taking the 2000 *l.* a Week, (which was in their own Hands) for part of the Money due to them from *Sir John James*, &c. upon the One Fifth of the Excise: And altho some Differences did at last arise in this matter betwixt them, yet it was settled in the King's Presence at the Treasury-Chamber, before my leaving the Staff; and was so far from being diverted by me, either from being paid into the Exchequer as the Act directed,

ed, or from being paid to any other Uses than the Direction of the said Act did appoint; that I will put the Truth or Falshood of what either he or I have writ about the Revenue, upon the Proof of that Particular. *And for the 83400 l. which he says was unpaid of the 200000 l.* I confess I understand not how that could be, when Mr. Kent and Mr. Duncomb might force the Receivers of the Excise to pay what was due to them on the one Fifth, whenever they pleased: Besides, that I believe at the Time of my leaving the Staff, there was 52000 l. in Mr. Kent's Hands, by an Arrear of the 2000 l. a Week on the Customs, then due to Sir John James, &c. By which Mr. Kent and Mr. Duncombe might pay themselves so much of whatsoever Sum was remaining unpaid to them at that time, on the one Fifth of the Excise. And in truth the whole Matter concerned me no more than it did Sir Robert himself: And I have some Reason to think, that the Examiner was not so ill instructed, as to have left that Sum out of his Charge (especially having particularly mentioned it,) if it could have been made any Argument against me; which (as I have already said) it cannot be; unless I had either given Orders to the Receivers of the Excise, not to pay the Fifth according to the Act, or had given them

them Orders for applying any part of it to other Uses than the Act directed: Either of which I do Challenge Sir Robert, or any body else, to prove; and therefore it was, that I called it, *Notoriously False*.

The next Head wherein he is knowingly unwilling to do me Right, is, *about the Poll Bill*, which I find I have spoke so fully to, in my Answer to the Examiner, that I see he thinks not fit to make any Reply to what I have there said; But only designs to make it a Piece of my ill Management, that 186585 *l.* 18 *s.* 9 *d.* (for which he says the Commissioners of the Treasury have given Assignments) is added as a Charge upon the Revenue, to make up his Additional Charge at the End of the Book, to amount to the Sum of 655634 *l.* 19 *s.* 6 *d.* whereas no body knows better than Sir Robert, that the Poll Bill was estimated to 400000 *l.* at least; That Credit was given by the Act for 300000 *l.* in Money upon it, and an indefinite Credit for Stores beyond the 300000 *l.*; So as no part of the Money or Credits lent upon that Act, was believed would ever have affected the Revenue at all; And if ready Money was promised to any body upon that Act, which was not Performed, I am sure no Man can say they had that Promise from me: And moreover though Sir Robert puts this 186585 *l.* 18 *s.* 9 *d.* as a Debt due only

to the Eastland Merchants, I remember that the Sum demanded by them in my time was far less, (and, as I think, not full 40000 *l.*) so that I believe, that reckoning must be swelled by other Demands, and is no Fault of mine if there be now such a Charge on the Revenue.

Likewise I find Sir Robert brings the same Paper, which was quoted by the Examiner for a State of the Revenue, as it was made up by my Lord Clifford the 10th of June, 1673. I confess I do not see any Use he makes of it: But he hopes perhaps that others will, when he has told them, *That the Original of that Paper was drawn by Sir Philip Lloyd*: But that can by no means agree with Sir Philip's own Letter, which is Printed in my Answer; and Sir Robert must give me also leave to doubt it; because I never saw nor heard of any such Paper from my Lord Clifford, who would probably rather have designed such a Paper for my Information, than any bodies else, unless the King himself. But the Examiner having said, *That he has a Copy of it under Sir Philip's own hand*, may put this Matter out of Dispute, if Sir Robert have but Interest enough to procure that Copy from the Examiner.

Those Points I have already spoke to, (as having been very dis-ingenuously handled by Sir Robert) I take to be all the Matters

ters of Fact mentioned by him, till he comes to the main Business, (beginning with the State of the Revenue at *Lady-Day, 1679.*) excepting a Mistake of the Printer, of Forty Pounds, which he believes hath been made in the Examiners Computation, *to the Sum of above Three Millions (altho' Sir Robert calls it a Repetition of the former Sum (which it is not):* And excepting an Acknowledgment he makes, *That the Customs never yielded so much as in my time:* And excepting the Head about Secret Service, where he confesses that the Sum of *252467 l. 10 s. 5 d.* is all that was paid for Secret Service in Mr. Bertie's Name, in *Three compleat Years ending Lady-Day, 1679;* but does add, *14640 l. in the said three Years,* which he does unhandsomely (and contrary to his own Knowledge) insinuate, as if the Yearly Sums for New-Years-Gifts (which I am not provided to say whether they be that Sum he names for Three Years or not) were privately directed to be distributed by Mr. Bertie; which on the contrary he knows was the King's constant Yearly Allowances to several of his Servants, and Officers, long before my time, and without any Alteration of them that I know in my time; so that I might justly have added this amongst the rest, which have

have had such disingenuous Applications made of them; but that I am not furnished to answer, nor do I know what he means, by that Sum which (with the 252467 *l.* to Mr. Berty, and the 14640 *l.* for New-Years-Gifts) he pretends to be for Secret Service, and to make the Sum of 309556 *l.* in the said three Tears; nor do I know to whom any such Money hath been paid for Secret Service in that time more than the said 252467 *l.* 10 *s.* 5 *d.* to Mr. Berty; and of which (as I have said in my former Answer) 57763 *l.* at least has been disbursed for Publick Uses, and Sir Robert may perhaps be mistaken in this Matter as well as he confesses (in the very next Paragraph) that the Examiner was, in his positive Averment, *that my Salary was never included in secret Service.*

Sir Robert begins, p. 174. of his Account with the Examiner's Charge, and my Deductions; but immediately confesses a *Mistake of the Examiner, in that Charge, to the Sum of 58352 *l.* 9 *s.* 6 *d.** which it seems is charged by the Examiner as part of the Total Charge, besides all the Advance-Money; of which the 58352 *l.* is part, and which I could not have known but by Sir Robert's Help; so as by that Computation, the Examiner's Charge upon the Three great Branches of the Revenue at *Lady-day,*
1679.

1679. ought to have been but 1427218 *l.* 6 *s.* 10 *d.* and whether it may not be yet less by such double Charges, which I cannot know for want of the Particulars of the General Charge, is very uncertain.

The Particulars, which I say ought to be deducted from that Charge, are the Nine following, *viz.*

1. For the Advance on the Excise, 270000
2. For Advance on the Hearth-Duty, 150000
3. To be discharg'd by Orders }
to the Commissioners of Ex- } 101000
cise on the first Act of dis- }
banding. _____
4. More by Tallies on the Sur- }
plus of the Excise for 30000 *l.* }
and 99000 *l.* being no Charge } 129000
on the Rent, except the }
Surplus fail, _____
5. More by Tallies which were }
to pay the Forces from *Lady-* }
day 79. forwards to *July*, fol- } 59588
lowing which was 97 Days }
beyond my time ; _____
6. More by Tallies on the Cu- }
stoms made use of to carry }
on the Service of the Navy } 35000
and Ordnance beyond that }
said *Lady-Day* 79. _____
7. More

7. More by Tallies struck for Pensions upon the two last Quarters of the Excise, viz. Christmas 78. and Lady-day 79. for Payment of which, Money was left in the hands of the Commissioners of Excise, about	33000
8. More by Tallies on the Customs restored for Tin, deposited in Mr. Kent's Hands,	15000
9. More by Tallies on the Customs, accounted by the Examiner to be unpaid to Mr. Montagu, which were paid in my time,	2342

Total Sum,—794930

I agree with Sir Robert, That the Examination of these Particulars must determine the true State of the Charge left then on the Kings Revenue; and by this Declaration of his own, that it must do so, it appears that Sir Robert did not think any great Weight was to be laid upon his following Particulars of 655634 l. 19 s. 6 d. by which he would swell the Debt to 2074879 l. 16 s. 0 d.

But I can by no means agree with him, nor admit his Reasons, why none of the above-

abovesaid Deductions should be allowed, but 59588*l.* to the Forces, and 2342*l.* to Mr. Mountagu, (nor does he agree with himself in some of them) and for the 4395*l.* 3*s.* 6*d.* which he alloweth on the Tin Account, it will appear in its proper Place to be over and above the 15000*l.* deducted for the Tin in my Computation; and must therefore in its due Place be added to my former Deductions.

As to the *Advances*, which are his first Exception, it is to be observed, that Sir Robert as well as the Examiner, makes use of a pretended Paper of the Lord Clifford's; but omits to draw from thence (as the Examiner doth) a State how the Revenue was left Charged by my Lord Clifford; and yet without doing that, it is impossible to compare whether the Debt be increased or decreased since that time: Infomuch that this Omission must be for some other End, and serves particularly that it may not be seen (as it must be by drawing such a State) and as it was in the Examiner's Book, That the *Advances in my Lord Clifford's time were Accounted no part of the Debt upon the Revenue*; and I wish that all his Majesty's Debts were in such a Condition as would always discharge it self, and yet leave his Majesty the full Use of his Revenue: And although Sir Robert be of another

ther Opinion, I cannot help believing, that if all his Majesty's Revenue was brought into the same way, which I brought the Excise, viz. of being Let upon a certain great Rent, and that secured by a great Sum advanced, and the Overplus (after certain Salaries paid for Management) to be to the King's own Use, with an Encouragement to the Managers of Increasing their Wages by a small Allowance out of every Pound, which they can improve beyond the Sum secured; the whole Revenue would be increased by the Industry of the Managers (who in that Case work for themselves as well as for the King) much more than would pay the Interest of the Sums advanced; as hath been made appear by the Overplus of the Excise in my Time; and which, I fear, it would not have done by any who had only taken pains for the King, without any Prospect of Gain to themselves more than their bare Salaries. But to conclude this Point, since it hath never heretofore been reckoned in the State of the Debt (not by the Examiner himself) and his Majesty having the Use of his whole Revenue, notwithstanding the Advance-Money, and that Sir Robert's best Reason, is only, *That he is of Opinion it might be better done by Management without Advance:* I suppose these first and second
De-

Deductions will be thought but reasonable, and I must here desire it may be observed, that Sir Robert, says, *I have reckoned the Advance on the Excise 20000 l. more than really it was; and yet in the End of the very same Paragraph, he confesses that the Advance on the Excise indeed was as much as I call it, viz. 270000 l.*

My Third Deduction is 101000 l. to be discharged by Orders to the Commissioners of Excise, &c. as aforesaid.

To which Sir Robert gives no Colour of Contradiction, only he says, *it was a part of a double Security given to Sir John James, &c. by which he acknowledges there was so much Money in their Hands for the discharging of Talleys; and then, whether it was in the Examiner's Charge or no, is no great matter, nor is it less to be allowed for one of the Deductions: Only here I do observe Sir Robert is so intimate with the Examiner, that he knows of what Particulars the Examiner's Charge is made up, which I should have been glad to have known either from the Examiner or Sir Robert; and then I could have answer'd more-particularly every part of the Charge, in the same Method as I do now set down every Particular of the Deductions which ought to be allowed.*

My

My Fourth Deduction, is 129000*l.* by Tallies on the Surplus of the Excise, which I say is no Charge upon the Rent; and yet Sir Robert says, that I say it is no Charge on the Revenue; which I do not say; and the Difference I make herein, is, because I found the Revenue of the Excise Let at a certain Rent of 530000*l. per Annum*, at my Entrance to the Treasury; which I first raised to 550000*l. per Annum*, and then to 560000*l. per Annum*; and it was never Let for more than that Sum under any certain Rent; and it was at the said Rent of 550000*l.* and no more, which Sir Robert made his Calculations concerning the State of the Revenue to the King, in 1675. about which something will be said in its proper Place: But I mention this now, to shew that this Branch of the Revenue was no more impaired by me, than himself confesses the Customs to have been in my time; and it is as well known that I raised the Hearth-Money from 145000*l. per Ann.* to 162000*l. per Ann.* so that how he will make out the Revenues being impaired from June 73. to March 75. and from March 75. to Lady-Day 79. as he says, I do not understand: Since therefore the highest Rent of the Excise was but 560000*l. per Ann.*

P and

and that by my way of Letting that Branch, betwixt a Farm at the said certain Rent of 560000 *l.* and a Management accountable to the King for the Overplus, there has arisen a Surplus of 129000 *l.* and more beyond the said Rent of 560000 *l.* I think it ought to be allowed as a Deduction, the Revenue not being abated by it; but on the contrary is accounted at 560000 *l. per Ann.* which is 10000 *l. per Ann.* more than Sir Robert accounts that Branch of the Revenue in his Computations to the King, and is 30000 *l. per Ann.* more than that Part of the Revenue was Let for at my Entrance to the Treasury, which is the time taken for making the Comparison betwixt the Charge on the Revenue then, and at my leaving the Treasury in 1679. So as in truth I might justly (though I do not) account all the Increases of the Revenue on any Branch of it in my Time to balance the Increase of the Debt in the said Time; and then I am sure the total of the Debt would be much less than it was when I entred to the Treasury; but I have only accounted this one Surplus, because it could not be depended upon as any certain Rent; nor was it charged to any certain Uses, as all the certain Rent of the Excise was; but was applicable to such Uses as his Majesty should direct.

My

My Fifth Deduction, is 59588 *l.* to the Forces, &c. which Sir *Robert* is pleased to allow.

My Sixth Deduction, is 35000 *l.* made Use of to carry on the Service of the Navy, Ordnance, &c.

And my Seventh Deduction is 33000 *l.* for Tallies struck for Pensions upon the Two last Quarters of the Excise, &c.

These Two last, viz. the Sixth and Seventh I have put together, because Sir *Robert* hath got *Certificates in these Two Particulars*, seeming to contradict the Reasons given by me for the Allowance of them as Deductions from the Charge; which I am glad to find is all he can pretend to contradict by any Authority; because both the Sums together, if they were not allowed, do amount but to 68000 *l.* and (as I have remarked before) he acknowledges, that the Examiner hath mistaken 58352 *l.* 9 *s.* 6 *d.* by a double Charge of so much of the Advance-Money; so as the Difference of my first Computation would be lessen'd but 10000 *l.* if these Two Sums were not to be deducted; but to shew that the Matter of Fact is as I have said in both these Particulars, I must shew that those *Certificates* (if true) from the Ordnance, and Commissioners of Excise, are nothing to the Matter he pretends to make out by

P 2

them;

them: For as to the Ordnance, I must needs say, that it was not only the Office from which I could get very little of any Accounts in my whole time; but (notwithstanding any Directions or Orders to the contrary) they would take no Notice of that Stop which was put to the Exchequer before my time; but did apply those Monies to Payments under that Stop, which were ordered to the Payments of Service forwards; so as it was impossible for me, *without entirely discharging the old Debt* of that Office, to have brought up their Payments to the time of my leaving the Staff; and this makes the latter Part of my time seem not to be provided for in that Office. But I do say that Tallies struck in my time to the Sum of 35000 *l.* (and which is reckoned as Part of Sir Robert's Charge of 1419244 *l.* 16 *s.* 6 *d.*) were paid after my time, and the Money applied by the present Commissioners of the Treasury in the stead of other Money, which they must have paid. And Sir Robert himself knows that these Lords Commissioners, when they appointed a weekly Sum out of the Customs, of 2000 *l.* a Week, to discharge the Debt by Tallies in Course, made Use of the Tallies struck for the Navy, Ordnance and Forces in their Course too; and by that means had so much also of the 2000 *l.* a Week,

a Week, which they applied to the Payment of the several Offices; as I doubt not but both the Commissioners of the Treasury, and Paymaster of the Forces, will own: And to say this was no carrying the Offices of the Navy and Ordnance forward beyond the time of my leaving the Staff (because it did not pay the whole Debt of those Two Offices) is no Argument; for until the whole Debt can be paid, all Payments are directed in Course: And as I paid Debts before my time, (especially to the Navy) so these Gentlemen must pay before their time; and so must the Payments of any who shall succeed them, be applied to the Payment of Ships and Yards, &c. due before their time, unless it may be supposed that Ships abroad, &c. (at the Alteration of the Treasury into other Hands) shall never be paid.

But had Sir Robert sent to the Office of the Ordnance for a Certificate, to know how much Money I had paid them in all in my time, and what the accrued Debt was in the said time, I doubt not but it would have appeared, that I had supplied more Money to that Office, than would satisfy the whole Debt accrued in the said time.

As to the 33000 L . or thereabouts (for I have not positively named that Sum) the Matter of Fact is,

That a stated Sum for Pensions was directed Yearly; so that if Tallies were not struck, yet the Money remained in the Hands of the Commissioners and Receivers of the Excise, until such Tallies were struck: And that this Money did remain in their Hands at my leaving the Staff (in part of a greater Sum) Sir Robert who was one appointed to state their Accounts, cannot but know; As also that those Commissioners and Receivers (being to be laid aside) did apply all the Cash in their Hands, to Tallies in Course, and paid over this 33000 L . or thereabouts, and the other Moneys in their Hands to discharge Tallies in Course; and such Tallies as are reckon'd Part of the Charge, left by me on that Branch of the Revenue.

But the said Commissioners and Receivers of the Excise, might perhaps give the present Lords Commissioners of the Treasury an Account of little or no Cash in their Hands, for the Reasons aforesaid; and yet this is no manner of Argument to prove what Sir Robert would infer by his Printed Paper; unless, as he had lessened thereby my Deductions, he had also lessened the Charge, as he ought to have done:

Knowing

Knowing that with the Money in their Hands, at my leaving the Staff, they really paid as much in Tallies, which are a Part of the Charge said to be left by me. And this if Sir Robert would have writ to them to certify, they must have owned to be true: And consequently (from what I have said concerning these Two Deductions) I hope others will think *them Reasonable*, altho' Sir Robert do not.

My Eighth Deduction, is 15000 *l.* by Tallies on the Customs, &c. This I must needs say was not so plainly expressed, as it ought to have been in my former Answer: For these Tallies were given to Mr. *Kingdon* (then Pay-Master of the Army) and not being made Use of by him before my leaving the Treasury, they were since delivered up by him, to the present Lords Commissioners of the Treasury; so that they relate not to that Account which Sir Robert hath taken the Trouble to set down. But I am sure Sir Robert knows it to be true, that such Tallies, to the Sum of 15000 *l.* were delivered up by Mr. *Kingdon* to the Lords Commissioners; and he ought therefore in Justice to have added them to that Sum of 4325 *l.* 3 *s.* 6 *d.* on Mr. *Kent's* Account; for the Knowledge of which I am beholden wholly to Sir Robert,

P 4 because

because otherwise I should have been ignorant of that Deduction.

My Ninth and last Deduction, is 2342 *l.* by Mr. Mountagu's Tallies, which Sir Robert is also pleased to admit.

Having gone through the Deductions, and having given the Reasons on which they are grounded, I hope they are so clear as will give every body Satisfaction; and I shall now follow Sir Robert's Method, By taking,

First, The Examiner's Charge, which was ——— } *l.* *s.* *d.*
1485570 00 0

Then Subtract my former Deductions, which were 794930 *l.* 00 *s.* 00 *d.* }

Then Subtract likewise the Deductions now to be added by Sir Ro. Howard's Assistance, amounting to 58352 *l.* 9 *s.* 6 *d.* which is double Charged on that Advance of Excise; and also 4395 *l.* 3 *s.* 6 *d.* deducted on Mr. Kent's Account of Tin, viz. 62747 *l.* 13 *s.* 0 *d.* }

Which together amounts to the Sum of ——— } 857677 13 0

And the remaining Charge will be ——— } 627892 07 0

I sup-

I suppose Sir Robert admits the Charge left on the Three great Branches of the Revenue by the Lord Clifford, to be as I have said in my Answer, viz. 469371 *l.* because he says nothing against it; and in that Computation are neither reckon'd Advance-Moneys, nor Moneys unpaid to Ships, &c. which amounted then to above Treble the Sum Sir Robert now reckons to Sir John Narborough's Fleet.

And then, the Charge	}	627892 07 0
left by me on the said 3 Branches, being but		

And the Charge by my	}	469371 00 0
Lord Clifford, being		

The Anticipations are increased in my Time, viz. in Five Years and Three Quarters (altho no Supplies were given by Parliament, but what were appropriated, and were so applied) only by the Sum of

158521 07 0

And as I have said in my Answer to the Examiner, that I paid in that Time, 318473 *l.* to the Goldsmiths for their Perpetual Interest, which is almost double the Sum increased upon the Anticipations: Besides the Rebellion of Virginia, &c. which I have

218 MEMOIRS, &c.

I have mention'd in that Answer; and therefore will not repeat them here.

Before he closes his Account, Sir Robert thinks fit to add to the Examiner's Charge, *A further Charge of 655634 l. 19 s. 6. d. By Three Particulars, viz.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Unpaid on the One } Fifth of the Excise, —	83000	00	0
The Debt of the <i>East-</i> } <i>land</i> Merchants, —	186585	19	9
The Debt to the Na- } vy upon the Return of } Sir J. Narborough's Fleet, }	385648	19	9
Of which he says the } present Lords Commissi- } oners of the Treasury } have paid and satisfied—	478646	18	6

I suppose the Examiner knew nothing of this matter, or certainly it would not have been Omitted by him: And I must here observe, that what Sir Robert calls in me, *a Charging the Revenue by Tallies*, he calls now in others, *a satisfying of Creditors*, although it be the very same thing, and by Tallies at a very great distance of Payment: Which if I had done, I perceive Sir Robert would have made no Use of for me, but to have added it to my Load of Anticipations.

For

For the 83000 *l.* as I have already said (and am very confident of the Truth of it) there was remaining in Mr. Kent's Hands at Lady-Day, 79. 52000 *l.* for 26 Weeks, of 2000 *l.* per Week on the Customs due to Sir John James and Partners; And for the Remaining 31000 *l.* or for the whole 83000 *l.* I know no Man that either did, or could have Protected them from the Payment of it, according to the Act, if Mr. Kent and Mr. Duncomb had Prosecuted the Receivers of the Excise about it; Nor did I ever use any Authority or other Means in that Matter, betwixt them, than by Persuading them (as I did all Men, who were concerned in the King's Service) to accommodate one anothers Occasions in their several Employments, as far as their own Safeties and Conveniencies would permit: Nor should I have either charged the King or any but the Receivers of the Excise themselves, to have made Satisfaction to any body for any Sum which was due to them by vertue of the Act of Parliament out of the one Fifth of the Excise.

For the 186585 *l.* 19 *s.* 9 *d.* (which Sir Robert calls the Debt to the Eastland Merchants, and which I do not remember to be so much in my time as 40000 *l.*) it became a Debt by the Money of the Poll-Act falling so infinitely short of what it was calculated

culated to be by the Parliament; and for which there will be found very little of my Directions; insomuch, that as I did not charge the Revenue with it, in my time, so I take my self to be no Cause of the accruing of that Debt.

For the 385648 l. 19 s. 9 d. due to the Fleet upon the Return of Sir John Narborough, I wonder Sir Robert will name it, when he is comparing the State of the Debt left in 1679. with the Debt left in 1673. when he knows how vast a Disproportion there is betwixt that Debt to the Navy, and this in 1679. the Sum then due to the Fleet being much above a Million: So that I look upon this last Addition to be (as I have said before) only to make a Noise; besides that Sir John Narborough's Fleet came in since I was out of Employment; and, I thank God, I am able to prove that there never was Three Ships in all my time, that were not paid off with ready Money; and as soon as the Ship Books were perfected by which they were to be paid.

Lastly, If Sir Robert will give me leave to reckon, *as the Examiner hath done*, pag. 84. I may reckon the Advance of the Excise, *viz.* 211647 l. 10 s. 6 d. (for Sir Robert does acknowledge, that I had only disposed of 58352 l. 9 s. 6 d. of the
270000 l.

270000 l. advanced on that Branch) to be so much in ready Money, towards Payment of the said Fleet.

So that upon the whole, I can no more conceive these Three last Particulars ought to be added to the Charge of the Revenue in my time, than the Examiner did, when he had mustered up all he could think possible to be laid to that Account; and for the particular of the Ships, it is impossible but there must always be a Debt to be paid by whomsoever shall succeed in the Treasury, only it will be less or bigger, as the Ships kept abroad are more or fewer in Number; insomuch, that Sir Robert needs not give himself the Trouble of proving this Particular with that Care which he seems to take about it.

Most of p. 157. is taken up about Sir Robert's Paper which was given to the King the 5th of March, 1675. by which he says *he intended other Uses than have been mentioned in my Answer to the Examiner.*

I shall say more to that Paper and some others of Sir Robert's Schemes, as also to some Managements of his own in his Office, and his mistaken Certificates, (which I have in my Custody) when my leisure will give me leave to ask him the Meaning of them. In the mean time his Paper of the 5th of March being Printed in my Answer, every
Man

Man is at liberty to make his own Construction of it; and not being present my self at the Delivery of it, I can only say what was told me when I received that Paper, from those whom I do perfectly believe. One Intent of the Paper, Sir Robert says, *was to prevent those Frauds which had been committed in the Exchequer*; but since he hath not thought fit to instance any one Particular of those Frauds, I am apt to believe, he either knows none, or none that he is willing to speak of; for he knows, that if any Fraud came to my Knowledge (as some did) I made it always to be examined in Publick; and I take it for one of the highest Vindications of my Integrity in the Treasury, that Sir Robert cannot charge me with any other Applications of Money to my own Use (out of those great Sums which have passed thro' my Hands) more than the Sum of 2747*l.* 5*s.* 11*d.* bestowed upon me at the making up of my Account as Treasurer of the Navy: Whereas there are good Store of Instances of Lord Treasurers heretofore, who from less Foundations of Estates than my self, have left visible Monuments of more Money laid out in some one single Building of theirs, (besides the Estates added in Proportion to them) than I have got in near Six Years Enjoyment of the same Office: So that
since

since the Blame can only be laid upon my Management (who could be no wiser than God had made me) and not upon any corrupt Actings in my Employment; I do not only willingly undergo Sir Robert's Rebukes, but do acknowledge my own Failings, and hope that by Sir Robert's good Advice, his Majesty will for the future be served as he ought to be.

In the last Page of his Account, Sir Robert says, *it is only to give a short Account, to shew his Judgment concerning Tallies of Anticipation, and how extremely satisfied he is (which I verily believe) to see his Opinion approved by the present Lords Commissioners.*

He has mentioned something of the Anticipations in the Beginning of his Account, which I passed over in that Place, because they would more properly be spoke to both together, as also the Matter of Interest depending upon such Anticipations.

And in the first Place, I do agree with Sir Robert as much as any body else can do, that it is better to avoid Tallies of Anticipation (where it can be done) than to make Use of them; but that the Revenue must be ruined by them, I deny; or that the Interest is left to any such Uncertainty, as he would have believed; but that it must be by the Knavery of the Lord Treasurer,
Chan-

Chancellor of the Exchequer, or the sworn Auditor of the Exchequer (before whom the Account is brought) if the King be wronged in what Interest he pays upon such Tallies.

I doubt not neither, but the present Lords Commissioners of the Treasury have endeavoured to avoid such Tallies; and so did I, till I found it impossible for me to help it; and (if I am not misinformed) although the present Lords Commissioners have spared 2000*l.* a Week by their other Retrenchments, to discharge Tallies (which I was not able to spare, and supply the King's other Occasions) yet those Tallies which were in Course, being paid, I hear and have good Ground to believe true, that now the Lords Commissioners are necessitated to comply with some Lenders of Money so far, as to give them Tallies of Anticipation to a considerable Sum: Nor do I know how it can be help'd, unless Sir Robert can be able to do more by his Legislative Capacity for Remedy of the Matter, than he will ever be able to do by his private; and if this be now the Case, as well as it was in my time, then by Sir Robert's Rule, *the Exchequer will still be no wiser than it hath been, in knowing when Interest is to commence upon such Tallies.*

'Tis true, that the Exchequer does not presently know the Commencement of Interest upon Anticipations; but I doubt not but the Lords Commissioners do take Care, that the Vouchers (tho' called private ones) shall be as Authentick as publick ones: And it is the Duty of a sworn Auditor to see they be so, from whence they are entred in the Exchequer; and from that time the Exchequer does know the Times of lending upon Tallies of Anticipation, and consequently the Charge of Interest upon them; so that the Bugbear is made far more terrible than it is, although (as I have said) it were better to be avoided, if the King's Necessities will permit.

I have now gone through Sir Robert's Account, and hope I have made appear that the State of the Revenue at *Lady-Day*, 1679. was not as it hath been represented either by the Examiner or Sir Robert Howard; and since Sir Robert's Friend (to whom he writes) had no Curiosity to enquire into those other Parts of the Examination which concerned the Affairs of State therein mentioned, I shall repeat nothing upon that Subject, but conclude, that his Friend is satisfied in those Matters, which are of much the greatest Concern to me: But I hope it will be taken Notice of, that both the Examiner and Sir Robert (how much
Q soever

soever they may be Strangers to one another) have carried on the same Design against me, as if it had been with the same Hand; saving, that Sir Robert has shewed himself to be the better Accomptant, by rectifying divers Errors in the Examiners Computations, and that he has been much more civil than the Examiner in his Language.

I shall conclude this Answer to Sir Robert Howard with this single Request to all my Countrymen; That they would not believe any thing against me by Reports, till they see it proved; And then as I shall desire no other Favour, so I doubt not but to be restored to the good Opinion of all such, as have not particular Prejudice against me.

An Explanation of the Earl of
DANBY'S Letter to Mr.
MONTAGU.

I Find so many Misconstructions made of the Earl of Danby's Letter to Mr. Montagu, the King's late Ambassador in France, dated the 25th of March, 1678. that I could not

not but in common Justice, give the World those true Explanations of it, which must needs satisfy the Minds of any, (who have no other than publick Designs) that there could be no Ill-meaning to the Nation by that Letter, had it not been written by the King's Command upon the Subject of *Peace* and *War*, wherein his Majesty alone is at all times Sole Judge, and ought to be obeyed not only by any of his Ministers of State, but by all his Subjects.

In the first Place the Letter shews, That what was sent by the *Earl*, was but a Copy of those Proposals which were consented to on the Part of the Confederates, and sent at the same time by Mr. Secretary *Coventry*; so that it appears, the Subject Matter of the Proposals was not only known to the Secretaries, but approved by the rest of the Council: And the Letter also shews the Reason, why full Direction was not then given by the Secretary to conclude upon them; because, altho' his Majesty at that time, knew by Mr. *Godolphin*, that those were the Propositions upon which the Confederates would make the Peace if they could; yet the formal Powers were not then come from them, which should enable the Ambassador in *France* to perfect the Treaty, if the *French* King should accept it.

At the same time, when this Intimation was given to his Majesty, of the Confederates desiring the Peace upon those Conditions, (and as the only Means left to save *Holland*, and the Interest of the Prince of *Orange* there) it was also desired of his Majesty, That whilst such formal Powers were preparing to conclude such a Peace, his Majesty would please in their behalf to find by some private Means the Humour of the *French* King, Whether it were likely he would accept those Propositions when they should be offered to him, as believing it might be some Disadvantage to the Confederates to propose them, if they should be refused.

And this was the Motive (at their Request, and at a time, when both *Ghent* and *Ipres* were newly taken, and *Holland* under the utmost Consternation) that his Majesty, to comply with them in a Matter which so highly concerned their Safety, did think fit, for the Secrecy of it, according to their Desires, to have the King of *France's* Mind known privately, and with all the Speed possible, that he might let the Confederates know the *French* King's Intentions, before they exposed themselves to a Publick Offer of what might be refused.

This is the true Meaning of what is said about feeling the King of *France's* Pulse, and

and making one Answer to be shewed to the Secretary, and another to the King himself; who endeavoured to send an Account into *Holland* of the French King's Answer, as privately, and speedily as was possible; and unless the Peace had been fully compleated, (the advantageous Terms whereof would have answered for themselves) his Majesty thought it might be ill resented by the Parliament, who could not presently know, either the earnest Request of the Confederates for the Peace, their Necessity of obtaining it, their Countries being in a Readiness for a Revolt, nor the Goodness of those Conditions which were demanded, and which made them unlikely to be granted; as it is afterwards expressed in the said Letter.

As to that Part of the Letter which says, (*In Case the Conditions of Peace shall be accepted, the King expects to have Six Millions of Livres a Year, for Three Years, from the time that this Agreement shall be signed between his Majesty and the King of France; because it will probably be two or three Years before the Parliament will be in Humour to give him any Supplies, after the making of any Peace with France*) it is so presently followed with this Clause, (*But if you find the Peace will not be accepted, you are not to mention the Money at all;*) And so soon after that with this farther Clause; (*That you*

believe, this will be the last time that you shall receive any Propositions of a Peace, if these be rejected, as you believe they will;) that it cannot be thought to have any dangerous Meaning in it, nor any great Hopes of getting the Money. But that it may be the more fully understood, you will find by Mr. Montagu's Letter of the 18th of Jan. 1676. which was read in the House of Commons, (for which I refer to his Lordship's Volume) viz. *If the King is for a War, you know what to do; if he hearkens to their Money, be pleased to let me know what they offer, and I dare answer to get our Master as much again; for Barillon's Orders are to make the Market as low as he can.*

Now, as Offers of Money had often been made both by Mr. Montagu, and Monsieur Barillon, for a Peace upon French Conditions, and Six Million of Livres had been offered by Monsieur Barillon for one Year; so, Mr. Montagu having informed the King, that whatever Monsieur Barillon should offer, he could get as much again, his Majesty was resolved to try Mr. Montagu's Power, in case the French would consent to the Confederates Conditions; and in Addition to Mr. Montagu's own Interest in moving the French King to give the Six Millions for more Years than one, his Majesty thought it might be a good Motive, without Prejudice to the Parliament or Nation,

tion, (which would have saved their own Money thereby) to say it would probably be two or three Years before the Parliament would be in humour to give him any Supplies, after having made any Peace with France.

The Reason why nothing was to be said to the Secretary concerning the Money, was because Mr. *Montagu*, in a former Letter to the King himself, had desired that he would acquaint no body but the Earl of *Danby* with the Business of the Money; so that he found that Employment for the Earl, of which he thought fit after to accuse him.

As I hope I have sufficiently explained those Parts of the Letter, which are liable to Misconstruction, viz. The Reasons for the Privacy of the Negotiation, for the sake of the Confederates: The Grounds upon which the Money was expected: The Reason why the Earl of *Danby* was employed in that Business of the Money, and why no mention was to be made of it to the Secretary, and the Reasons why his Majesty would not have his Parliament to know it until the Conditions had been perfected, (of which his Majesty would have then been able to have given a very good Account) or being broken quite off, never needed to have been known at all:

I say, having spoke to all those Particulars, I must likewise crave Liberty to observe to you those Parts of the same Letter, which

which do sufficiently shew, that his Majesty was not in the least to be drawn from the Interest of the Confederates, for any private Gain of Money to himself.

For you see the Ambassador had agreed to the Sum, but not for so long a time; and no Man can imagine why Six Millions of Livres should have been refused, if either his Majesty had had any ill Design at home, or would have deserted the Confederates. But on the contrary, you see his Majesty would make no Proposals, but what they desired; nor even those, without being prest by them to it: Nor would he have any Motion of Money to the *French King*, unless he accepted those very Conditions, so desired by the Confederates. And if the Confederates could have obtained such a Peace as they desired, and his Majesty a good Sum of Money towards defraying those Charges he had been at, without taxing of his People, I conceive it ought to have been esteemed good Policy, as it hath been in the former times of *Henry VII.* and *Henry VIII.* rather than made a Pretence of Treason: But how the not doing any of those things excepted against in that Letter, (and that plainly by reason of the King's great Integrity to the Confederate Interest, which he so evidently prefer'd before his own Personal Advantage) should become Treason, is beyond my Comprehension.

I hear,

It is likewise made a great Aggravation of this Letter, that it was dated Five Days after an Act pass'd to raise Money for an Actual War with *France*: But surely every Man knows, That an Act to raise Money for a War, is no Declaration of the War.

That his Majesty hath always the sole Power of Peace and War in his own Hands.

That his Ministers were never recalled from Treating the Peace at *Nimiquen*; and besides, our then ill-prepared Condition for a War, that of the Confederates was then so low, that it was not above a Week after, that the *French* Propositions were made at *Nimiquen*, upon which the Peace was concluded; and after which Propositions (altho' far worse ones than what had been offered by his Majesty but ten Days before) the *Dutch* would never think of supporting the War any longer. And so far was his Majesty from agreeing to that Peace, which was then made, that his Majesty's Ministers at *Nimiquen* did not only refuse to sign it, but his Majesty used all possible means to engage the *Dutch* with him in the offensive Treaty against *France*; and tho' he could not procure them to do so, he sent an Army so soon as it was in readiness, to march to their Assistance, and thereby, had it been possible, he endeavoured to have encouraged them to continue the War.

Tho'

Tho' a great deal more is to be said upon this Subject, I think this enough to convince any Man, that as this Letter did no harm, nor hindered one Step of the Preparations for War against *France*; so, that it intended nothing of Ill either to the Kingdom, or the Cause of the Confederates; and therefore the Writer of it can deserve no Blame from this Letter, if it had not been written by the King's Command and Direction.

As I have wondred much at those strained Constructions I have found upon this Letter; so I confess I have not been able to give my self a Reason how this Letter should only find the hard Fate of being loaded with such Crimes; and yet nothing said to those Letters of Mr. *Montagu's*, the Originals of which were also read in the House of Commons, which do so manifestly give his Majesty the Invitations to expect great Sums from *France*, if he would endeavour it; and which does acknowledge this Earl to be so great an Enemy to *France* above all other Men, that it was grown a Maxim to the States-men there, by one who very well understood the State of the Kingdom, *That they must destroy his Credit with our King, before they could hope to do any good in England.*

APPENDIX.

NUMBER I.

Articles of Impeachment of High Treason and other high Crimes, Misdemeanours and Offences, against Thomas Earl of Danby, Lord High-Treasurer of England: As they were deliver'd in to the House of Lords, in the Name of the Commons of England, by Sir Henry Capel, Decemb. 23. 1678.

I.

THAT He hath traiterously encroach'd to himself Regal Power, by treating in Matters of Peace and War with Foreign Ministers and Embassadors, and giving Instructions to his Majesty's Embassadors Abroad, without communicating the same to the Secretaries of State, and the rest of his Majesty's Council, against the express Declaration of his Majesty and his Parliament; thereby intending to defeat and overthrow the Provision that has been deliberately made by his Majesty and his Parliament for the Safety and Preservation of his Majesty's Kingdoms and Dominions.

A

THAT

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II.

T H A T He hath traiterously endeavour'd to subvert the Ancient and Well-establish'd Form of Government in this Kingdom, and instead thereof to introduce an Arbitrary and tyrannical Way of Government; and the better to effect this his Purpose, he did design the Raising of an Army, upon Pretence of a War against the *French* King, and to continue the same as a Standing Army within this Kingdom: And an Army being so raised, and no War ensuing, an Act of Parliament having pass'd to Pay and Disband the same; and a great Sum of Money being granted for that End, he did continue the Army contrary to the said Act, and misemploy'd the said Money given for the Disbanding, to the Continuance thereof, and issued out of his Majesty's Revenues divers great Sums of Money for the said Purpose, and wilfully neglected to take Security of the Paymasters of the Army, as the said Act requir'd; whereby the said Law is eluded, and the Army is yet continued, to the great Danger and unnecessary Charge of his Majesty and the whole Kingdom.

III.

T H A T He traiterously intending and designing to alienate the Hearts and Affections of his Majesty's Good Subjects from his Royal Person and Government, and to hinder the Meetings of Parliaments, and to deprive his Sacred Majesty of their safe and wholesome Counsel, and thereby to alter the Constitution of the Government of this Kingdom, did propose and negotiate a Peace for the *French* King,
upon

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upon Terms disadvantageous to the Interest of his Majesty and his Kingdoms; for the doing whereof, he did endeavour to procure a great Sum of Money from the *French King*, for enabling him to maintain and carry on his said traiterous Designs and Purposes, to the Hazard of his Majesty's Person and Government.

IV.

THAT He is Popishly affected, and hath traiterously concealed (after he had Notice) the late horrid and bloody Plot and Conspiracy, contrived by the Papists, against his Majesty's Person and Government; And hath suppressed the Evidence, and reproachfully discountenanced the King's Witnesses in the Discovery of it, in Favour of Popery, immediately tending to the Destruction of the King's Sacred Person, and the Subversion of the Protestant Religion.

V.

THAT He hath wasted the King's Treasure, by issuing out of his Majesty's *Exchequer* several Branches of his Revenue for unnecessary Pensions and secret Services, to the Value of 231602 l. within two Years; and that he hath wholly diverted out of the known Method and Government of the *Exchequer* one whole Branch of his Majesty's Revenue to private Uses, without any Accompt to be made of it to his Majesty in his *Exchequer*; contrary to the express Act of Parliament, which granted the same; and he hath removed two of his Majesty's Commissioners of that Part of the Revenue, for refusing to consent to such his unwarrantable

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Actings therein, and to advance Money upon that Branch of the Revenue for private Uses.

VI.
THAT He hath by indirect Means procured from his Majesty to himself divers considerable Gifts and Grants of Inheritance, of the ancient Revenue of the Crown, even contrary to Acts of Parliament.

For which Matters and Things the Knights, Citizens and Burgeses of the Commons in Parliament, do, in the Name of themselves, and of all the Commons of *England*, Impeach the said *Thomas* Earl of *Danby*, Lord High-Treasurer of *England*, of High Treason, and other High Crimes, Misdemeanours and Offences, in the said Articles contain'd : And the said Commons by Protestation, saving to themselves the Liberty of exhibiting at any time hereafter, any other Accusation or Impeachment against the said Earl, and also of replying to the Answers which the said *Thomas* Earl of *Danby* shall make to the Premises, or any of them, or any Impeachment or Accusation that shall be by them exhibited, as the Cause (according to Course and Proceedings of Parliament) shall require ; Do pray, That the said *Thomas* Earl of *Danby*, may be put to answer all and every the Premises, that such Proceedings, Trials, Examinations and Judgments may be upon them, and every one of them had and used, as shall be agreeable to Law and Justice, and that he may be sequestred from Parliament, and forthwith committed to safe Custody.

P O S T.

POSTSCRIPT.

NOW let it be noted, That the *Treasurer's* Letter to Mr. *Montagu*, of the 25th of March, was writ in that very *Session*, in the Beginning whereof (the better to persuade the *Parliament* that our Court did really intend to make a War against *France*) he caused to be written and published a Book, entitled *Christianissimus Christianandus*; in which he renders the *French King* as black as *Hell* it self. And after he had (by this and such like *Fallacies*) prevail'd with the *Parliament* to give Money to raise so great a *Naval* and *Land Force* to make an actual War with *France* (as the Title and Body of the *Poll Bill* declares) he doth in that Letter, but five Days after the passing the same, in a clandestine Way, (tho' to the violating the *Royal Word* and *Faith* of the *Nation*) labour to strike up a *Peace*, and obtain such vast Sums of Money from the *French King* (whom he thought the Terror of our *Arms* would now oblige to grant any thing) as he might thereby be enabled to alter and change the Legal and Ancient Government of *England*, by laying aside *Parliaments* (as ill-humour'd things) and introducing an absolute Power by a fix'd *Standing Army*.

How well this Man hath deserved of his Country, and whether the Justice of the *Nation* can be satisfied, till he be made as great an Example in Punishment, as he hath been in *Mischief*, let all Men judge.

6 A P P E N D I X

Jovis 20. die Martii, 1678.

Resolved, *Nemine contradicente,*

That a Message be sent to the Lords, to put them in mind of the Impeachment of High Treason, exhibited against *Thomas Earl of Danby*, in the Name of the Commons of England, and to desire that he may be forthwith committed to safe Custody.

Resolved, *&c.*

That it be referred to the Committee of Secresie to draw up further Articles against *Thomas Earl of Danby*.

Sabbati 22. die Martii, 1678.

Resolved, *Nemine contradicente,*

That a Message be immediately sent to the Lords, to remind their Lordships of the last Message sent from this House relating to *Thomas Earl of Danby*; And to demand, That *Thomas Earl of Danby* may be forthwith sequestred from Parliament, and committed to safe Custody.

Martis 25. die Martii, 1679.

A Message from the Lords by Baron Littleton, and Baron Thurland.

Mr. Speaker, We are commanded by the Lords to acquaint this House, That they sent to apprehend *Thomas Earl of Danby*, both to his House here in Town, and to his House at *Wimboldon*; and that the Gentleman Usher of the Black Rod had returned their Lordships Answer, that he could not be found.

Veneris 4. die Aprilis, 1679.

Resolved,

That an humble Address be made to his Majesty, to desire his Majesty to issue out his
Royal

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Royal Proclamation for the apprehending *Thomas Earl of Danby*; with the usual Penalties upon such as shall conceal him: And that his Majesty will be further pleased to give Order to the Officers of his Majesty's Household, That they take care that the said Earl of *Danby* be not permitted to reside within either of his Majesty's Palaces of *Whitehall*, *Somerset-house*, and *St. James*. And it is referred to Mr. *Powel*, &c. to prepare and draw up the same, and present it to the House to Morrow Morning.

NUMBER II.

The Plea of the Earl of Danby, late Lord High-Treasurer of England, to the Articles of Impeachment, and other high Crimes and Misdemeanours, and Offences, exhibited against him, by the Name of Thomas Earl of Danby, Lord High-Treasurer of England.

THE said Earl for Plea, saith, and humbly offereth to your Lordships, as to all and every the Treasons, Crimes, Misdemeanours and Offences contained or mentioned in the said Articles, That after the said Articles exhibited, namely, the First of *March*, now last past, the King's most Excellent Majesty, by his most Gracious Letters-Patents of Pardon, under his Great-Seal of *England*, bearing Date at *Westminster* the said First Day of *March*, in the One and Thirtieth Year of his Majesty's Reign; and here, into this most High and Ho-

A 4 nourable

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nourable Court, produced under the said Great-Seal.

Of His special Grace, certain Knowledge, and meer Motion, hath Pardoned, Remised and Released to him, the said *Thomas* Earl of *Danby*, all, and all manner of Treasons, Misprisions of Treasons, Insurrections, Rebellions, Felonies, Exactions, Oppressions, Publications of Words, Misprisions, Confederacies, Concealments, Negligencies, Omissions, Offences, Crimes, Contempts, Misdemeanors and Trespasses whatsoever, by himself alone, or with any other Person or Persons, or by any other, by the Command, Advice, Assent, Consent, or Procurement of him the said *Thomas* Earl of *Danby*, advised, committed, attempted, made, perpetrated, concealed, committed, or omitted, before the 27th Day of *February* then and now last past, being also after the Time of the said Articles exhibited, altho' the said Premises, or any of them did, or should touch or concern the Person of his said Majesty, or any of his Publick Negotiations whatsoever; and also his Majesty's Affairs with Foreign Embassadors sent to his said Majesty, or by not rightly prosecuting his Majesty's Instructions and Commands to his Embassadors, residing on his Majesty's Behalf in Foreign Parts.

And as to all and singular Accessaries to the said Premises, and every of them, altho' he the said *Thomas* Earl of *Danby* were, or were not of the said Premises, or any of them, Indicted, Impeached, Appealed, Accused, Convicted, Adjudged, Out-law'd, Condemned,

or

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for Attainted, and all and singular Indictments, Impeachments, Inquisitions, Informations, Exigents, Judgments, Attainders, Outlawries, Convictions, Pains of Death, Corporal Punishments, Imprisonments, Forfeitures, Punishments, and all other Pains and Penalties whatsoever, for the same, or any of them; and all, and all manner of Suits, Complaints, Impeachments and Demands whatsoever, which his said Majesty, by reason of the Premises, or any of them then had, or for the Future should have, or his Heirs, or Successors, any ways could have afterwards against him the said *Thomas* Earl of *Danby*: And also Suit of his Majesty's Peace, and whatsoever to his Majesty, his Heirs, or Successors, against him the said Earl of *Danby*, did, or could belong, by Reason or Occasion of the Premises, or any of them. And his Majesty hath thereby given and granted his firm Peace to the said *Thomas* Earl of *Danby*. And further, his Majesty willed and granted, that the said Letters-Patents, and the said Pardon and Release therein contained, as to all the things therein pardoned and released, should be good and effectual in the Law, altho' the Treasons, Misprisions of Treason, Insurrections, Rebellions, Felonies, Exactions, Oppressions, Publications of Words, Misprisions of Confederacies, Concealments, Negligences, Omissions, Offences, Crimes, Contempts, Misdemeanours and Trespases, were not certainly specified. And notwithstanding the Statute in the Parliament of the Lord *Richard* the Second, late King of *England*, in the 13th Year of his Reign, made and provided,

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provided. And notwithstanding the Statute in the Parliament of the Lord *Edward* the Third, in the Fourteenth Year of his Reign, made and provided, or any other Statute, Act, or Ordinance to the contrary thereof made and provided. And moreover, his said now Majesty, by his said Letters-Patents of his further Grace, did firmly command all and singular Judges, Justices, Officers, and others whomsoever, That the said free and general Pardon of his said Majesty, and the general Words, Clauses and Sentences abovesaid, should be construed, expounded, and adjudged in all his said Majesty's Courts, and elsewhere, in the most beneficial, ample and benign Sense.

And for the better and more firm Discharge of the said Earl, of, and from the Crimes and Offences aforesaid, according to the true Intents of his Majesty, and in such beneficial Manner and Form to all Intents and Purposes whatsoever, as if the said Treasons, Crimes, Offences, Concealments, Negligences, Omissions, Contempts and Trespases aforesaid, and other the said Premises, by apt, expresse and special Words had been remitted, released and pardoned. And that the said Letters-Patents of Pardon, and the Release and Pardon therein contained, shall be pleaded and allowed in all and every his Majesty's Courts, and before all his Justices whatsoever, without any Writ of Allowance, any Matter, Cause, or Thing whatsoever in any Ways notwithstanding, as by the said Letters-Patents themselves more at large appeareth, which said Letters Patents follow in these Words.

CAROLUS

APPENDIX. II

CAROLUS *Secundus Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c.* Omnibus ad quos presentes literæ nostræ pervenerint, Salutem, Sciatis, quod Nos pro diversis bonis Causis & Considerationibus nos ad hoc specialiter movent. De Gratia nostra speciali, ac ex certa scientia & mero motu nostris Pardonavimus & Relaxavimus, &c.

And the said Earl doth averr, That he the said *Thomas* Earl of *Danby*, in the said Articles named, is the said *Thomas* Earl of *Danby* in the said Letters Patents of Pardon here produc'd, likewise named. Which Pardon the said Earl doth rely upon, and pleaded the same in Bar of the said Impeachment, and in Discharge of all the Treasons, Crimes, Misdemeanours and Offences contain'd, or mention'd in the said Articles of Impeachment, and every of them; and this the said Earl is ready to averr.

Whereupon he humbly prays the Judgments of your Lordships, and that his Majesty's most Gracious Pardon aforesaid may be allowed: And that he the said Earl, by vertue hereof, may be (from all the said Articles of Impeachment, and all and every of the Treasons and Crimes therein alledg'd against him) acquitted and discharged.

NUMBER

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NUMBER III.

A Copy of the Pardon of Thomas Earl of Danby.

CAROLUS Secundus, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos præsentēs literæ nostræ Pervenerint, Salutem. Sciatis, quod Nos pro diversis bonis Causis & Considerationibus Nos ad hoc specialiter moventibus, de Gratia Nostra speciali ac ex certa scientia & mero motu nostris, Pardonavimus, Remissimus & Relaxavimus, ac per præsentēs pro Nobis, Heredibus & Successoribus nostris, Pardonamus, Remittimus & Relaxamus prædilecto, & perquam fideli Consanguineo & Consiliario nostro Thomæ Comiti Danbii, omnes & omnimodas Proditiones, Crimina læsæ Majestatis, Misprisiones Proditionum, Insurrectiones, Verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentias, Omissiones, Offensas, Crimina Contemptus, Malefacta & Transgressionēs quæcunque, per se solum seu cum aliqua alia persona, vel aliquibus alijs personis, aut per aliquem alium, sive aliquos alios, ex præcepto, advisamento, assensu, consensu, seu procuratione ejusdem Thomæ Comitis Danbii, advisata, præcepta, attempta, facta perpetrata, concelata, commissa, seu omissa, ante 27 diem Februarii jam ultimæ præteritum, licet præmissa vel eorum aliqua, vel aliquod, tangunt vel tangat personam vel negotiationes Nostras Publicas qualescunque, nec non transactiones nostras cum Forensicis Legatis ad nos missis

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sis, vel non rite proseguendo Instructiones & Mandata Nostra Legatis Nostri, in partibus extra marinis, ex parte Nostra resident. ac etiam omnia & singula accessaria præmissorum & cujuslibet eorum, licet idem Thomas Comes Danbii de præmissis vel aliqua præmissorum indictatus, impetitus, appellatus, restatus, convictus, adjudicatus, utlegatus condemnatus vel attinctus; Existit vel non Existit, ac omnia & singula Indictamenta, Impetitiones, Inquisitiones, Informationes, exigenda judicia, attincta, utlegaria, Convictiones, Executiones, Penas mortis, Penas corporales, Imprisonamenta, foris factura, Punitiones, & omnes alias Penas, & Pœnalitates quascunque, pro eisdem vel eorum aliquo, ac omnia & omnimoda, Sectas, Querelas, Impetitiones, & Demanda quæcunque, quæ Nos versus ipsum Thomam Comitem Danbii, ratione præmissorum vel eorum alicujus, habuimus, habemus, seu in futurum habere poterimus, aut Heredes, seu Successores Nostri, ullo modo habere poterint, in futuro, sectamque pacis Nostræ, ac quæ ad Nos Heredes & Successores Nostros versus ipsum Thomam Comitem Danbii pertinet, seu pertinere poterit, ratione seu occasione præmissorum, seu eorum aliquorum vel alicujus, ac firmam pacem Nostram. Et inde damus & concedimus per præsentem, & ulterius volumus, & concedimus, Quod hæc literæ nostræ, ac hæc nostra Pardonatio, Remissio, Relaxatio in eisdem contenta, quoad omnia & singula superius pardonata, remissa, & relaxata, bonæ & effectuales in lege sint, & erint, licet Proditiones, Crimina læsæ Majestatis, Misprisiones Proditionum, Insurrectiones, Rebelliones, Felloniæ, Exactiones, Oppressiones, verborum Propalationes, Misprisiones, Confederationes, Concelamenta, Negligentiæ,

ligerentia, Omissiones, Offensa, Crimina Contem-
ptus, Malefacta & Transgressiones antedicta, Mi-
nus certe specifict. existant. Et non obstante Statu-
to Parlamento Dom. Ricardi Secundi, nuper Re-
gis Angliæ, Anno 13 Regni sui edito, & proviso.
Et non obstante Statuto in Parlamento Dom. Ed-
vardi Tertii, nuper Regis Angliæ, Anno Regni
sui 14 edito & proviso; Aut aliquo alio Statuto,
Acta vel Ordinatione, in contrarium inde editis &
provisis. Et ulterius de uberiori Gratia Nostra fir-
miter Præcipimus omnibus & singulis Iudicibus,
Iusticiariis, vel aliis quibuscunque, Quod hæc
præsens Litera & Generalis Pardonatio nostra &
generalia Verba, Clausula & Sententia supradicta,
construentur, exponentur & adjudicentur in omni-
bus curiis nostris & alibi, in beneficentissimo, am-
plissimo, & benignissimo sensu, & pro maxima &
firmitate exoneratione prædicti Thomæ Comitis
Danbii de & à criminibus & offensis prædictis se-
cundum veram intentionem nostram, & in tam be-
neficiali modo & forma & ad omnes intentionis &
proposita, prout si prædictæ Proditiones, Crimina
hæc Majestatis, Misprisiones, Proditionum cri-
mina Offensa Misprisiones Concelamenta, Negli-
gentia, Omissiones, Contemptus, & Transgressiones
prædictæ ac cetera præmissa per apta expressa, &
specialia verba Pardonata, Remissa, & Relaxata
fuiſſent. Et quod hæc Literæ Patentes, Remissio,
Relaxatio, & Pardonatio, omnia in eisdem contenta,
in quibuscunque curiis & coram quibuscunq; Iusti-
ciariis nostris, placitentur & allocentur, sine aliquo
Breve de allocatione, aliqua re, causa vel materia
quacunque in aliquo non obstante. In cujus rei Testi-
monium has literas nostras fieri fecimus Patentes.
Teste me ipso apud Westmonasterium 1. die Martii,
Anno Regni nostri 31.

CHARLES

CHARLES the Second, by the Grace of
 God of England, Scotland, France and Ireland,
 King, Defender of the Faith, &c. To all to
 whom these our Letters-Patents shall come,
 sendeth Greeting. Know ye, that we for di-
 vers good Causes and Considerations, Us here-
 unto especially moving, have out of our special
 Favour, certain Knowledge and meer Motion
 of our own, pardoned, remitted and released,
 and by these Presents for Us, our Heirs and
 Successors, do pardon, remit and release to
 our Well-beloved and Right Trusty Cousin and
 Counsellor, *Thomas Earl of Danby*, all, and all
 manner of Treasons, as well High Treason, as
 Misprisions of Treason, Insurrections, Revel-
 ing of Councils, Misprisions, Confederations,
 Concealments, Neglects, Omissions, Offences,
 Crimes, Contempts, Misdeeds and Transgres-
 sions whatsoever, by himself alone, or with
 any other Person, or Persons, or by any o-
 ther, or others, by the Command, Advice,
 Assent, Consent, or Procurement of the said
Thomas Earl of Danby, advised, commanded,
 attempted, done, performed, concealed, com-
 mitted, or omitted, before the 27th Day of
February, now last past. Although the Pre-
 mises, or any of them touch, or may touch Our
 Person, or our publick Negotiations whatso-
 ever, or our Transactions with Foreign Em-
 bassadors unto Us sent, or for not right follow-
 ing our Instructions and Mandates to our own
 Embassadors resident on Our Behalf in Foreign
 Parts beyond the Seas; And also all and singu-
 lar Accessories to the Premises, or any of them,
 altho'

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altho' the said *Thomas* Earl of *Danby* be indicted, impeached, appealed, arrested, convicted, adjudged, or as Embassador condemned, or be, or be not attainted of the Premises, or any of them; and all and every Indictments, Impeachments, Inquisitions, Informations, Judgments to be required, Attainders, Outlawries, Convictions, Penalties of Death, Corporal Punishments, Imprisonments, Forfeitures, Sufferings, together with all other Pains and Penalties whatsoever, for the same, or any of them, and all, and all manner of Suits, Complaints, Impeachments and Demands whatsoever, which We against the said *Thomas* Earl of *Danby*, by reason of the Premises, or any of them, have had, now have, or hereafter may have, or which our Heirs or Successors in any manner may have hereafter, together with any Suit for Breach of our Peace, which to Us, our Heirs, or Successors, against the said *Thomas* Earl of *Danby* doth, or may belong, by Reason or Occasion of the Premises, of some, or any of them; We do for ever Indemnifie him. Moreover We give and grant by these Presents, and it is our further Will and Pleasure, that these our Letters, and this our Pardon, Remission and Release therein contained, as to all and singular the things above pardoned, remitted and released, be and shall be good and effectual in Law, altho' the Treasons, High Treasons, Misprisions of Treasons, Insurrections, Rebelions, Felonies, Extortions, Oppressions, Betraying of Councils, Confederacies, Concealments, Negligencies, Omissions, Offences, Crimes, Contempts, Misdemeanours and Transgressions

gressions aforesaid, be not fully specified. And notwithstanding the Statute of *Richard* the Second, late of *England* King, in the 13th Year of his Reign made and provided. And notwithstanding the Statute by the Parliament of *Edward* the Third, late King of *England*, in the 14th Year of his Reign made and provided, or any other Statute, Act, or Ordinance to the contrary heretofore publish'd and provided: And moreover of our abundant Grace, We do strictly command all Judges, Justices, or others whosoever, that this present Letter, with our General Pardon, and General Words, Clauses, and Sentences abovesaid, shall be construed, expounded and adjudged in all our Courts, and elsewhere, in the most beneficial, most ample, and most favourable Sense, and for the greatest and firmest Discharge of the aforesaid *Thomas* Earl of *Danby*, of, and from the Crimes and Offences aforesaid, according to our true Intention, and in so beneficial a Manner and Form, and to all Intents and Purposes, so as if the said Treasons, High Treasons, Misprisions of Treason, Crimes, Offences, Omissions, Contempts, Concealments, Negligence and Transgression aforesaid, and other the Premises, had been by apt, express and special Words, pardon'd, remitted and releas'd. And that these Letters-Patents, Remission, Release and Pardon, with all things therein contain'd, in whatsoever Courts, and before whatsoever Our Justices, shall be plead-ed and allowed, without any Writ of Allowance, any Thing, Cause, or Matter whatsoever in any wise notwithstanding. In Witness

B
whereof

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whereof We have caused these Our Letters-
Patents to be made. Witness My self at West-
minster, the First Day of March, in the 31st
Year of Our Reign.

NUMBER IV.

*The Reasons and Narrative of Proceedings betwixt
the two Houses; which were deliver'd by the
Commons to the Lords, at the Conference, on
Monday the 26th of May, 1679.*

THE Commons have always desir'd, that
a good Correspondence may be preserv'd
between the two Houses.

There is now depending between your Lord-
ships and the Commons a Matter of the greatest
Weight: In the Transactions of which, your
Lordships seem to apprehend some Difficulty
in the Matters propos'd by the Commons.

To clear this, the Commons have desir'd
this Conference; and do readily acknowledge,
That any Change in Judicature in Parliament,
made without Consent in full Parliament, to be
of pernicious Consequence, both to his Majesty
and his Subjects; and conceive themselves o-
blig'd to transmit to their Posterity, all the
Rights which of this kind they have received
from their Ancestors, by putting your Lord-
ships in mind of the Progress that has already
been between the two Houses, in Relation to
Propositions made by the Commons, and the
Reasonableness of the Propositions themselves;
they doubt not to make it appear, that their

Aim

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Aim has been no other, than to avoid such Consequences, and preserve that Right; and that there is no delay of Justice on their Part. And to that End, do offer to your Lordships the ensuing Reasons and Narrative: That the Commons in bringing the Earl of *Danby* to Justice, and in Discovery of that execrable and traiterous Conspiracy, have labour'd under many great Difficulties, is not unknown to your Lordships.

Nor is it less known to your Lordships, that upon the Impeachment of the House of Commons against the Earl of *Danby* for High Treason, and other high Crimes, Misdemeanours and Offences, even the common Justice of Sequestrating him from Parliament and forthwith committing him to safe Custody, was then requir'd by the Commons, and denied by the House of Peers, though he then sat in their House; of which your Lordships have been so sensible, that at a free Conference the 10th of *April* last, your Lordships declared, That it was the Right of the Commons, and well warranted by Precedents of former Ages, That upon an Impeachment of the Commons, a Peer so impeach'd ought of right to be order'd to withdraw, and then to be committed. And had not that Justice been denied to the Commons, a great Part of this Session of Parliament, which hath been spent in framing and adjusting a Bill, for causing the Earl of *Danby* to appear, and to answer that Justice from which he was fled, had been saved, and had been employ'd for the Preservation of his Majesty's Person, and the Security of the Nation; neither had he had the

Opportunity of procuring for himself that illegal Pardon, which bears Date the First of *March* last past, and which he hath now pleaded in Bar of his Impeachment: Nor of wasting so great a Proportion of the Treasure of the Kingdom, as he hath done since the Commons exhibited their Articles of Impeachment against him.

After which Time thus lost, by reason of the Denial of that Justice, which of Right belong'd to the Commons upon their Impeachment, the said Bill being ready for the Royal Assent, the said Earl then rendred himself; and by your Lordships Order of the Sixteenth of *April* last, was committed to the *Tower*. After which he pleads the said Pardon; and being press'd, did at length declare, He would rely upon, and abide by that Plea; which Pardon pleaded, being illegal and void, and so ought not to bar or preclude the Commons from having Justice upon the Impeachment; They did thereupon, with their *Speaker*, on the Fifth of *May* Instant, in the Name of themselves and all the Commons of *England*, demand Judgment against the said Earl, upon their Impeachment; not doubting, but that your Lordships did intend in all your Proceedings upon the Impeachment, to follow the usual Course and Method of Parliament.

But the Commons were not a little surpriz'd by the Message from your Lordships, deliver'd them on the Seventh of *May*; thereby acquainting them, That as well the Lords Spiritual as Temporal had order'd, That the Tenth of *May* Instant, should be the Day for
hearing

APPENDIX. II

hearing the Earl of *Dan'y*, to make good his Plea of Pardon. And that your Lordships had addressed to his Majesty for naming of a Lord High Steward in the Case of the Earl of *Darby*.

Upon Consideration of this Message, the Commons found, that the admitting of the Lords Spiritual to exercise Jurisdiction in these Cases, was an Alteration of the Judicature in Parliament; and that if a Lord High Steward should be necessary upon Tryal on Impeachments of the Commons, the Power of Judicature in Parliament, upon Impeachments, might be defeated, by suspending or denying a Commission to constitute a Lord High Steward.

And that the said Day of Tryal appointed by your Lordships, was so near to the Time of your said Message, that these Matters, and the Method of proceeding upon the Tryal, could not be adjusted by Conference betwixt the two Houses, before the Day so nominated. And consequently, the Commons could not then proceed to Tryal, un'less the Zeal which they have for speedy Judgment against the Earl of *Danby* should induce them at this Juncture, both to admit the Enlargement of your Lordships Jurisdiction, and to sit down under these or any Hardships, though with the Hazard of all the Commons Power of Impeaching for Time to come, rather than the Tryal should be deferr'd for some short time, whilst these Matters might be agreed on and settled.

For reconciling Differences in this great and weighty Matter, and for saving that Time, which would necessarily have been spent in Debates and Conferences betwixt the two

Houses, and for expediting the Tryal, without giving up the Power of Impeachment, or rendering it ineffectual.

The Commons thought fit to propose to your Lordships, that a Committee of both Houses might be appointed for this Purpose. At which Committee (when agreed to by your Lordships) it was then agreed, that the Proposition as to the Time of the Tryal, should be the last thing consider'd. And the Effect of this Agreement stands reported upon your Lordships Books.

After which, the Commons communicated to your Lordships, by your Committee, a Vote of theirs, (*viz.*) That the Committee of the Commons should insist upon their former Vote of their House, That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the *Tower*, and that when that Matter would be settled, and the Method of Proceedings adjusted, the Commons should then be ready to proceed upon the Tryal of the Pardon of the Earl of *Darby*, against whom they had before demanded Judgment; but the Commons as yet received nothing from your Lordships towards an Answer of that Vote, save that your Lordships have acquainted them, that the Bishops have ask'd Leave of the House of Peers, that they might withdraw themselves from the Tryal of the Five Lords, with Liberty of entering their usual Protestation.

And tho' the Commons Committee have almost daily declared to your Lordships Committee, that that was a necessary Point of Right to

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to be settled before the Tryal, and offered to debate the same; your Committee always answered, That they had not any Power from your Lordships, either to confer upon, or to give any Answer concerning that Matter.

And yet your Lordships, without having given the Commons any satisfactory Answer to the said Vote, or permitting any Conference or Debate thereupon, and contrary to the said Agreement, did, on *Thursday* the 22^d of *May*, send an Message to the Commons, declaring, That the Lords Spiritual as well as Temporal, had order'd, that the 27th of this Instant *May* be appointed for the Tryal of the Five Lords.

So that the Commons cannot but apprehend that your Lordships have not only departed from what was agreed on, and in Effect laid aside that Committee which was constituted for preserving a good Understanding betwixt the two Houses, and better Dispatch of the weighty Affairs now depending in Parliament, but must also needs conclude from the Message, and the Votes of your Lordships on the 14th of *May*, that the Lords Spiritual have a Right to stay and sit in Court, till the Court proceeds to the Vote of Guilty or not Guilty. And from the Bishops asking Leave (as appears by your Lordships Books two Days after your said Vote) that they might withdraw themselves from the Tryal of the said Lords, with Liberty of entring their usual Protestation, and by their persisting still to go on and give in their Votes Proceeding upon the Impeachment; that their Desire of Leave to withdraw at the

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said Tryal, is only an evasive Answer to the before mention'd Vote of the Commons, and chiefly intended as an Argument for a Right of Judicature in Proceedings upon Impeachments, and as a Reserve to Judge upon the Earl of *Danby's* Plea of Pardon, and upon these and other like Impeachments, although no such Power was ever claim'd by their Predecessors, but is utterly denied by the Commons. And the Commons are the rather induced to believe it so intended, because the very asking Leave to withdraw, seems to imply a Right to be there, and that they cannot be absent without it.

And because by this Way they should have it in their Power, whether or no for the Future, either in the Earl of *Danby's* Case, or any other, they will ever ask Leave to be absent; and the Temporal Lords a like Power of denying Leave, if that should once be admitted necessary.

The Commons therefore are obliged not to proceed to the Tryal of the Lords on the 27th of this instant May, but to adhere to their aforesaid Vote: And for their so doing, besides what hath been now and formerly by them said to your Lordships, do offer you these Reasons following.

REASONS.

REASONS.

BECAUSE your Lordships have received the Earl of *Darby's* Plea of Pardon, with a very long and unusual Protestation, wherein he hath aspersed his Majesty by false Suggestions, as if his Majesty had commanded or countenanced the Crimes he stands charged with; and particularly suppressing and discouraging the Discovery of the Plot, and endeavouring to introduce an arbitrary and tyrannical Way of Government; which remains as a Scandal upon Record against his Majesty, tending to render his Person and his Government odious to his People; against which it ought to be the first and principal Care of both Houses to vindicate his Majesty, by doing Justice upon the said Earl.

H.

The setting up a Pardon to be a Bar of an Impeachment, defeats the whole Use and Effect of Impeachments; and should this Point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future: Whereby the chief Institution for the Preservation of the Government (and consequently the Government it self) would be destroy'd. And therefore the Case of the said Earl (which in Consequence concerns all Impeachments whatsoever) ought to be determin'd before that of the said Five Lords, which is but their particular Case.

And

And without resorting to many Authorities of greater Antiquity, the Commons desire your Lordships to take notice (with the same regard they do) of the Declaration which that Excellent Prince, King Charles the First of Blessed Memory, made in this Behalf, in his Answer to the Nineteen Propositions of both Houses of Parliament: Wherein, stating the several Parts of this regulated Monarchy, he says; *The King, the House of Lords, and the House of Commons, have each particular Privileges: And among those which belong to the King, he reckons Power of Pardonning.* After the enumerating of which, and other his Prerogatives, his said Majesty adds thus: *Again, That the Prince may not make use of this high and perpetual Power, to the Hurt of those for whose Good he hath it, and make use of the Name of publick Necessity for the Gain of his private Favourites and Followers, to the Detriment of his People.* The House of Commons (an excellent Conserver of Liberty, &c.) is solely intrusted with the first Propositions concerning the Levies of Monies, and the Impeaching of those, who for their own Ends, though countenanced by any surreptitiously-gotten Command of the King, have violated the Law, which He is bound (when He knoweth) to protect, and to the Protection of which they were bound to advise Him, at least not to serve him in the contrary. And the Lords being intrusted with a Judicatory Power, are an excellent Screen and Bank between the Prince and People, to assist each against any Incroachments of the other, and by just Judgements to preserve that Law, which ought to be the Rule of every one of the Three, &c. Therefore the Power legally placed in
both

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both Houses is more than sufficient to prevent and restrain the Power of Tyranny, &c.

III. Until the Commons of England have Right done them against this Plea of Pardon, they may justly apprehend, that the whole Justice of the Kingdom, in the Case of the Five Lords, may be obstructed and defeated by Pardons of like Nature.

IV. An Impeachment is virtually the Voice of every particular Subject of this Kingdom, crying out against an Oppression, by which every Member of that Body is equally wounded. And it will prove a Matter of ill Consequence, That the Universality of the People should have Occasion ministred and continued to them, to be apprehensive of utmost Danger from the Crown, from whence they of Right expect Protection.

V. The Commons exhibited Articles of Impeachment against the said Earl, before any against the Five other Lords, and demanded Judgment upon those Articles: Whereupon your Lordships have appointed the Tryal of the said Earl to be before that of the other Five Lords; Now your Lordships having since inverted that Order, gives a great Cause of Doubt to the House of Commons, and raises a Jealousie in the Hearts of all the Commons of England, that, if they should proceed to the Tryal of the said Five Lords in the first place, not only Justice will be obstructed in the Case of

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of those Lords, but that they should never have Right done them in the Matter of this Plea of Pardon; which is of so fatal Consequence to the whole Kingdom, and a new Device to frustrate publick Justice in Parliament.

Which Reasons and Matters being duly weighed by your Lordships, the Commons doubt not but your Lordships will receive Satisfaction concerning their Propositions and Proceedings; and will agree, That the Commons ought not, nor can, without deserting their Trust, depart from their former Vote communicated to your Lordships; *That the Lords Spiritual ought not to have any Vote in any Proceedings against the Lords in the Tower; and when that Matter shall be settled, and the Methods of Proceedings adjusted, the Commons shall then be ready to proceed upon the Tryal of the Earl of Danby.*

May 27. 1679.

The Narrative and Reasons delivered at the Conference Yesterday with the House of Commons were again read, and after a long Debate, the Vote of this House, dated the 13th of May Instant, and the Explanation thereupon, dated the 14th Instant, were read, and the Question was put, Whether to insist upon these Votes concerning the Lords Spiritual, and it was resolv'd in the Affirmative.

DISSEN-

DISSENTERS Present.

Buckingham.	Newport.
Huntingdon.	Say and Seal.
Kent.	P. Wharton.
Shaftsbury, P. R.	Leicester.
Bedford.	Scarsdale.
Winchester.	Strafford.
Rochester.	Derby.
North and Grey.	Delamer.
Suffolk.	Howard.
J. Lovelace.	Paget.
Townsbend.	Clare.
Herbert.	Salisbury.
Gray.	Falconberg.
Stamford.	Windsor.

NUMB.

NUMBER V.

A Copy of the Bill of Exclusion, concerning the Duke of York.

FOrasmuch as these Kingdoms of *England* and *Ireland*, by the wonderful Providence of Almighty God, many Years since have been delivered from the Slavery and Superstition of Popery, which had despoiled the King of his Sovereign Power, for that it did and doth advance the Pope of *Rome* to a Power over Sovereign Princes, and makes him Monarch of the Universe, and doth withdraw the Subjects from their Allegiance, by their pretended Absolutions from all former Oaths and Obligations to their lawful Sovereign, and by many Superstitions and Immorosities hath quite subverted the Ends of the Christian Religion; but notwithstanding that Popery hath been long since condemn'd by the Laws and States of this Realm, for the detestable Doctrine and traitorous Attempts of its Adherents, against the Lives of their lawful Sovereigns, Kings and Queens of these Realms, yet the Emissaries, Priests and Agents for the Pope of *Rome* resorting into this Kingdom of *England* in great Numbers, contrary to the known Laws thereof, have for several Years last past, as well by their own Devilish Acts and Policies, as by Counsel and Assistance of Foreign Princes and Prelates, known Enemies to these Nations, contrived and carried on a most horrid and execrable Conspiracy to destroy and murder
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the Person of his Sacred Majesty, and to subvert the ancient Government of these Realms, and to extirpate the Protestant Religion, and massacre the true Professors thereof: And for the better effecting their wicked Designs, and encouraging their villanous Accomplices, they have traiterously seduced *James Duke of York*, presumptive Heir of these Crowns, to the Communion of the Church of *Rome*, and have induced him to enter into several Negotiations with the Pope, his Cardinals and Nuncio's, for promoting the *Romish* Church and Interest, and by his Means and Procurement have advanced the Power and Greatness of the *French* King, to the manifest Hazard of these Kingdoms, that by the Descent of these Crowns upon a *Papist*, and by Foreign Alliances and Assistance, they may be able to succeed in their wicked and villanous Designs. And for as much as the Parliaments of *England*, according to the Laws and Statutes thereof, have heretofore for great and weighty Reasons of State, and for the publick Good and common Interest of this Kingdom, directed and limited the Succession of the Crown in other manner than of course it would otherwise have gone; but never had such important and urgent Reasons as at this Time press and require their using of their said extraordinary Power in that Behalf. Be it therefore Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this Parliament assembled, and by the Authority of the same. And it is hereby Enacted accordingly, That

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That *James Duke of York, Albany and Ulster* (having departed openly from the Church of *England*, and having publicly professed and owned the Popish Religion, which hath notoriously given Birth and Life to the most damnable and hellish Plot, by the most gracious Providence of God lately brought to light) shall be excluded and disabled; and is hereby excluded and disabled for ever from possessing, having, holding, inheriting, or enjoying the Imperial Crowns and Governments of this Realm, and these Kingdoms, and of all Territories, Countries, and Dominions, now, or which shall hereafter be under his Majesty's Subjection, and of and from all Titles, Rights, Prerogatives, and Revenues with the said Crowns, now or hereafter to be enjoyed; and that upon the Demise or Death of his Majesty, without Heirs of his Body (whom God long preserve) the Crowns and Governments of this Kingdom, and all Territories, Countries and Dominions, now, or which shall hereafter be under his Majesty's Subjection, with all the Rights, Prerogatives, and Revenues therewith, of Right enjoyed, and to be enjoyed, shall devolve and come upon such Person who shall be next lawful Heir of the same, and who shall have always been truly and professedly of the Protestant Religion, now establish'd by Law within this Kingdom, as if the said Duke of *York* were actually dead; and that whatever Acts of Sovereign Power the said Duke of *York* shall at any time erect or exercise, shall be taken, deemed, and adjudged, and are hereby declared and enacted High Treason, and to be punished accordingly. And

And forasmuch as the Peace, Safety, and Well-being of these Kingdoms do so intirely depend upon the due Execution of, and Obedience to this Law, be it further Enacted by the aforesaid, That if any Person shall in any wise at any time during the King's Life (which God preserve) or after his Demise or Decease, aid, assist, counsel, or hold correspondence with the said Duke of York (who is and ought to be esteemed a perpetual Enemy to these Kingdoms and Governments,) either within these Kingdoms, or out of them ; and shall endeavour or contrive his Return into either of them, or into any of the Territories or Dominions of the same ; or shall, during the King's Life, publish or declare him to be the lawful or rightful Successor apparent presumptive, or other Heir to the Crown of *England* ; or shall after the Demise or Decease of the King that now is, proclaim, publish, or declare the said Duke of York to be King, or to have Right or Title to the Crown or Government of *England* or *Ireland* ; or shall by Word, Writing or Printing, maintain or assert that he hath any manner of Right or Title to the Crown or Government of these Kingdoms, and shall be therefore Convict upon the Evidence of two or more lawful and credible Witnesses, shall be adjudged guilty of High Treason, and shall suffer and forfeit as in Cases of High Treason.

And, forasmuch as the said Duke's Return, or Coming into any of the aforesaid Kingdoms, Countries, Territories, or Dominions, will naturally conduce to bring vast Mischiefs, and all the Evil hereby provided against upon
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them in War and Slaughter, and unspeakable Calamities, which therefore the said Duke must be presumed to design by such his Return or Coming into any of the aforesaid Kingdoms, Countries, Territories, or Dominions : Be it therefore likewise Enacted, and and it is hereby Enacted by the Authority aforesaid, That if the said Duke do at any time hereafter return, or come into any of the aforesaid Kingdoms, Countries, Territories or Dominions, he shall be, and is hereby, thereupon, and for so doing, attainted of High Treason ; and all manner of Persons whatsoever are hereby authoriz'd and requir'd to apprehend, secure, and imprison his Person ; and in case of Resistance made by him, or any of his Accomplices, to subdue, or imprison him, or them, by Force of Arms.

NUMBER VI.

*The Right Honourable the Earl of Shaftsbury's
Speech to the House of Lords, March 25.
1679.*

My Lords,

YOU are appointing of the Consideration of the State of *England* to be taken up in a Committee of the whole House, some Day next Week. I do not know how well what I have to say may be received, for I never study either to make my Court well, or to be popular ; I always speak what I am commanded by the Dictates of the Spirit within me.

There are some other Considerations that concern *England* so nearly, that without them
you

you will come far short of Safety and Quiet at Home : *We have a little Sister, and she hath no Breasts, what shall we do for our Sister in the Day when she shall be spoken for ? If she be a Wall, we will build on her a Palace of Silver ; if she be a Door, we will inclose her with Boards of Cedar.* We have several little Sisters without Breasts, the *French Protestant Churches*, the two Kingdoms of *Ireland and Scotland* ; the Foreign Protestants, are a Wall, the only Wall and Defence to *England* ; upon it you may build Palaces of Silver, glorious Palaces. The Protection of the Protestants Abroad is the greatest Power and Security the Crown of *England* can attain to, and which can only help us to give Check to the growing Greatness of *France*. *Scotland and Ireland* are two Doors, either to let in Good or Mischief upon us ; they are much weakned by the Artifice of our cunning Enemies, and we ought to inclose them with Boards of Cedar.

Popery and Slavery, like two Sisters, go hand in hand, sometimes one goes first, sometimes the other, in a-doors, but the other is always following close at hand.

In *England*, *Popery* was to have brought in *Slavery* ; in *Scotland*, *Slavery* went before, and *Popery* was to follow.

I do not think your Lordships or the Parliament have Jurisdiction there. It is a Noble and Ancient Kingdom ; they have an Illustrious Nobility, a Gallant Gentry, a Learned Clergy, and an Understanding, Worthy People ; but yet we cannot think of *England* as we ought, without reflecting on the Condition therein. They are under the same Prince, and the Influence

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fluence of the same Favourites and Councils ; when they are hardly dealt with, can we that are the Richer expect better Usage? For 'tis certain, that in all Absolute Governments, the poorest Countries are always most favourably dealt with.

When the Ancient Nobility and Gentry there cannot enjoy their Royalties, their Shrevaldoms, and their Stewardaries, which they and their Ancestors have possessed for several hundreds of Years ; but that now they are enjoyn'd by the Lords of the Council to make Deputations of their Authorities to such as are their known Enemies.

Can we expect to enjoy our *Magna Charta* long under the same Persons and Administration of Affairs? If the Council Table there can imprison any Nobleman or Gentleman for several Years, without bringing him to Tryal, or giving the least Reason for what they do ; can we expect the same Men will preserve the Liberty of the Subject here?

I will acknowledge, I am not well vers'd in the particular Laws of *Scotland* ; but this I do know, that all the Northern Countries have, by their Laws, an undoubted and inviolable Right to their Liberties and Properties ; yet *Scotland* hath outdone all the Eastern and Southern Countries, in having their Lives, Liberties and Estates subjected to the Arbitrary Will and Pleasure of those that govern. They have lately plunder'd and harra's'd the richest and wealthiest Countries of that Kingdom, and brought down the barbarous *Higblanders* to devour them ; and all this without almost a colourable Pretence to do it : Nor can there be
found

found a Reason of State for what they have done; but that those wicked Ministers design'd to procure a Rebellion at any rate, which as they managed, was only prevented by the miraculous Hand of God, or otherwise all the Papists in *England* would have been arm'd, and the fairest Opportunity given in the just Time for the Execution of that wicked and bloody Design the Papists had; and it is not possible for any Man that duly considers it, to think other, but that those Ministers that acted that, were as guilty of the Plot, as any of the Lords that are in Question for it.

My Lords, I am forced to speak this the plainer, because till the Pressure be fully and clearly taken off from *Scotland*, 'tis not possible for me, or any *thinking Man* to believe that Good is meant us here.

We must still be upon our Guard, apprehending that the Principle is not changed at Court, and that these Men that are still in Place and Authority, have that Influence upon the Mind of our Excellent Prince, that he is not, nor cannot be that to us, that his own Nature and Goodness would incline him to.

I know your Lordships can order nothing in this, but there are those that hear me, can put a perfect Cure to it; until that be done, the *Scottish Weed* is like Death in the Pot, *Mors in Olla*: But there is something too, now I consider, that most immediately concerns us; their Act of Twenty two Thousand Men to be ready to invade us upon all Occasions. This I hear, that the Lords of the Council there have treated as they do all other Laws, and expounded it into a standing Army of Six

Thousand Men, I am sure we have Reason and Right to beseech the King, That that Act may be better consider'd in the next Parliament there: I shall say no more for *Scotland* at this time, I am afraid your Lordships will think I have said too much, having no concern there: But if a *French* Nobleman should come to dwell in my House and Family, I should think it concern'd me to ask what he did in *France*: For if he were there a Felon, a Rogue, a Plunderer, I should desire him to live elsewhere; and I hope your Lordships will do the same thing for the Nation, if you find the same Cause.

My Lords, Give me Leave to speak two or three Words concerning our other Sister, *Ireland*: Thither, I here, is sent *Douglas's* Regiment, to secure us against the *French*. Besides, I am credibly inform'd, that the Papists have their Arms restored, and the Protestants are not many of them yet recovered from being the suspected Party; the Sea Towns as well as the In-land, are full of Papists: That Kingdom cannot long continue in the *English* Hands, if some better Care be not taken of it. This is in your Power, and there is nothing there, but is under your Laws; therefore I beg, that this Kingdom at least may be taken in Consideration, together with the State of *England*: For I am sure there can be no Safety here, if these Doors be not shut up and made sure.

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NUMBER VII.

The Honourable Mr. Powell's Speech in the House of Commons, upon the Earl of Danby's Impeachment, Pardon and Plea.

Mr Speaker,

I Should have been pleased to have heard (somewhat omitted) needful to have been spoken unto, from some other Member of this House, rather than my self; it is concerning the Earl of *Danby*, who stands impeached by the Commons of *England* of High Treason.

The Person to whom we owe the Dangers and Fears of the *French King* against us,

The Person, to whom we owe the Threats and severe Answers to those humble Addresses we made the last Sessions of Parliament.

The Person, to whom we owe the Ruins of this Nation, and Exhausting the King's Revenue.

The Person, to whom we owe the Expence of 200000 *l.* and upwards, within a Year, unaccounted for.

The Person, to whom we owe the many Prorogations that hapned in the last Parliament, when many profitable Bills were ready for passing.

The Person, to whom we owe the Raising of a Standing Army, to be kept up by the Receipt of six Millions of Livres yearly, for three Years together, to enslave us and our Religion,

The Person, to whom we owe the late Bone that was thrown in the Sitting of the last Parliament, to hinder the good Issue that might have come by their Proceedings; who is now laying down his Staff, and making up his Accounts in the Treasury as he pleaseth, to en-

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rich himself out of the Spoils of the People, and so depart.

My humble Motion is, That a Message be sent immediately to the Lords from the Commons of England, to desire their Lordships, That *Thomas* Earl of *Danby* be immediately committed to safe Custody, he being impeach'd by the Commons of England of High Treason.

NUMBER VIII.

The Earl of Danby's Speech in the House of Peers, upon an Impeachment of High Treason, &c. brought up against his Lordship by the House of Commons, Decemb. 23, 1678.

My Lords,

I Hope you will not enter upon any other Business before you have given that Liberty to me, which is the Priviledge of every Peer, to be heard upon any Accusation that is brought against him, though of far less Moment than what hath been newly read against my self.

I confess I should have heard this Charge with Horror, if the Matter of it had been true; but I thank God, I know my Innocency to be so great, that it protects me from all sorts of Fear, but that of lying under so black a Character; as may be believed by those that cannot hear my Defence; though I have the Confidence to think that it is not truly believed in the Hearts of the greatest part of those that have been informed against me.

I must needs confess, that I thought my self the last Man in this Kingdom that should ever have been in danger of being accused for Treason

son, because I know no Man that abhors it more, and that would pursue it more vigorously than my self, against any that should be guilty of it. Nay to such a degree is my Detestation of that Crime, that were I sure the dearest Child I have were guilty of it, I would willingly be his Executioner.

My Lords, I know this is not the time for me to enter regularly upon my Defence, because I know your Lordships will first order me a Copy of my Charge, and appoint me a Time for my Vindication; when I doubt not but to do it to the full Satisfaction of your Lordships and all the World. In the mean time I will only beg leave to observe to your Lordships, That those Articles in this Charge which can seem to have any thing of Treason in them, have their Answer so obvious, that there is very little in them which may not be answered by many others as well as my self, and some of them by every Man in the Kingdom.

The First, which is the assuming Regal Power, I confess I do not understand; having never in my Life done any thing of great Moment, either at Home, or relating to Foreign Matters, for which I have not always had his Majesty's Command. And although I am far from having been the most cautious Man in taking Care of my own Security, (which perhaps my great Innocence hath been the Cause of) yet I have not been so wanting of common Prudence, as in the most material Things not to have had his Majesty's Orders and Directions under his own Hand, and particularly for the Letters now made use of against me.

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The Second, I think, doth scarce need my giving any Answer to; it being obvious, that the Army was no more raised by me, than by every Lord in this House: And who ever is in that Station which I hold, must certainly be a Fool, to desire any thing which creates a Want of Money, especially so great an one, as the Charge of an Army must necessarily and immediately produce. And for one Part of the Article concerning the Pay-Master of the Army, it is in Fact otherwise; for Security from the Pay-master has been taken in the Sum of Four Hundred Thousand Pounds.

The Third is of the same Nature with the First, and comes from the same Foundation, which is, what a Gentleman hath thought fit to produce to the House of Commons. I will not now censure his Action, I think it will do enough for it self; I will only say, That although I take it for one of the greatest Misfortunes which can befall a Man, to lie under such a Charge of the House of Commons, yet I would much sooner choose to be under that Unhappiness, than under his Circumstances.

The Fourth Article is not only false in every part of it, but it is not possible to believe it true, without my being the greatest Fool on Earth, as well as the blackest Villain. For were I capable of such a Wickedness, yet the more wicked any Man is, the more he is carried to his own Interest; and is it possible any thing under Heaven can agree less with my Interest, than the Destruction of this King? Can I possibly hope to be better than I am? And is it not apparent, that there is not one Man living, whose Happiness depends so much as mine upon the Preservation of his Person?

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My Lords, I know there is not a Man in the World, that can in his Heart think me guilty of that part of the Article, if I should say nothing to it. But besides, I was so far from concealing this hellish Plot, that it is notoriously known, his Majesty sent me the first Notice of it, together with forty three Heads of the Information, before I knew a Syllable of it from any Body else: And it hath been own'd at the Bar of the House of Commons by him (from whom only I had the Intelligence) that he had all the Encouragement and Dispatch from me that I could give him. Besides, when it was disclosed to the Council-board, he told some of the Clerks of the Council, (as he had done me divers times before) that it would have been much better, and more would have been discover'd, if it had been longer kept private. Besides this, I had the Fortune to be particularly instrumental in seizing Mr. Coleman's Papers, without which Care there had not one of them appear'd, and consequently, the best and most material Evidence which is yet of the Plot, had been wholly wanting. And certainly this is the first time that any Man was accused to be the Concealer of that Plot, whereof he hath been a principal Means of procuring the Discovery.

For that Part of the Article that says, I am Popishly affected, I thank God, that the contrary is so known to all the World, that even some of those that voted against me, did own their Knowledge of the Falsity of that Allegation; and I hope I have through my whole Life given so good Testimony of my Religion, both in my own Family, and by my Services to the Church, (when-ever it hath lain in my power) that

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that I shall not need much Vindication in that Particular: And I hope your Lordships will forgive me my Weakness, in telling you, that I have a younger Son in the House of Commons, whom I shall love the better as long as I live, for moving to have that Part of the Article to stand against me, that by that Pattern it might appear, with what sort of Zeal the whole hath been carried to my Prejudice.

The Fifth Article will, upon Examination, appear to be as ill grounded as any of the rest; and I am sorry I am able to give one Reason, which is, That I have known no Treasure in my time to waste, having enter'd upon an empty Treasury, and never seen one Farthing given to his Majesty (in almost six Years) that hath not been appropriated to particular Uses, and strictly so applied by me, as the Acts have directed. And there hath not been one of those Aids which, in stead of giving the King Money, hath not cost him more out of his own Purse, to the same Uses, as doth appear by the larger Dimensions of the new Ships, and so in other things: Insomuch that I take upon me the Vanity to say, That by the Payments I have made to the Navy and Sea-men, beyond former Times; the Paying off the greatest part of the Debt which was stop'd in the *Exchequer* before my Time; by my own Punctuality in the Course of Payments, and by other things which I am able to shew, I doubt not but to appear meritorious instead of being criminal upon that Article.

As to the Sixth Article, which mentions my great Gettings, I cannot deny, but that I serve a Master, whose Goodness and Bounty hath been a great deal more to me than I have deserved,

served, and to whom I can never pay Gratitude enough by all the Services of my Life. But when the Particulars of those Gettings shall appear, it will be found very contrary to what is suggested abroad; and that in near six Years time in this Great Place, I have not got half that, which many others have got in lesser Places in half that time. And from the Examination of this, which I desire may be seen, there will arise Matter to accuse my Prudence, in not having done for my Family what justly I might, but nothing to arraign either my Honour, my Conscience, or my faithful Service to the Crown.

My Lords, If my Obedience to the King shall not be my Crime, I think nothing else will stick upon me from these Articles: For my own Heart flatters me to believe that I have done nothing but as a true Protestant, and a faithful Servant both to my King and Country. Nay, I am as confident, as that now I speak, that had I either been a Papist or Friend to the *French*, I had not been now accused. For I have reason to believe that the principal Informer of the House of Commons hath been assisted by *French* Advice to this Accusation; and if the † Gentleman were as just to produce all he knows for me, as he hath been malicious to shew what may be liable to misconstruction against me, or rather against the King (as indeed it is) no Man could vindicate me more than himself. Under whose Hand I have to shew, how great an Enemy to *France* I am thought, how much I might have had to have been otherwise, and what he himself might have had for getting me to take it. But I do not wonder this Gentleman will do me no Right, when he does not think fit to do it to

† Mr. Mountagu.

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His Majesty (upon whom chiefly this Matter must reflect.) Although he knows, as will appear under his Hand, that the greatest Invitations to his Majesty for having Money from *France*, have been made by himself; that if his Majesty would have been tempted for Money, he might have sold Towns for as much as if they had been his own, and the Money have been convey'd as privately as he pleased: That his Majesty might have made Matches with *France*, if he would have consented to give them Towns; and yet that the King hath always scorn'd to yield the meanest Village that was not agreed to by the *Spaniard* and *Hollander*. That Gentleman hath often pretended how much his own Interest in *France* was diminish'd, only by being thought my Friend. And besides divers other Instances, I have under his Hand to shew the Malice of the *French* Court against me, I sent two of his Letters to the House of Commons, which shew how Monsieur *Ruvigny* was sent hither on purpose to ruin me; which I am well assured at this time they would rather see, than of any one Man in *England*. Besides what that Gentleman could say of this kind (if he pleas'd) I hope his Majesty will give me leave (in my Defence) to say in his Presence, and in the Hearing of divers Lords, with whom I have the Honour to sit in the Committee of Foreign Affairs, that, which were it not true, his Majesty must think the impudentest and worst of Men to affirm before him, That ever since I had the Honour to serve his Majesty to this Day, I have deliver'd it as my constant Opinion, That *France* was the worst Interest his Majesty could embrace, and that they were the Nation in the World from whom

whom I did believe he ought to apprehend the greatest Danger; and who have both his Person and Government under the last Degree of Contempt: For which Reason alone (were there no other) I would never advise his Majesty to trust to their Friendship.

My Lords, 'Tis my greatest Happiness, that your Lordships are my Judges; whose Wisdom and Justice are so great, that you will both discern the Truth of the Evidence when it shall come before you, and in the mean time distinguish truly what the Crimes are (if they could be proved) and not what they are call'd. For this Reason this House hath wisely provided to have the special Matter before them, to the end they may be satisfied whether the Charge have its right Denomination; for otherwise it were to no Purpose to desire special Matter, unless it were to see whether the special Matter alledg'd be what it is call'd. As for Example, If a Man were accused of having traiterously pass'd the River in a Pair of Oars, this is special Matter, and stiled Treason by inserting the Word Traiterously; yet your Lordships would not therefore proceed as taking it for Treason. So in this Case I beg for all your Lordships sakes as well as my own, that you will please to use that Caution which will be necessary for all your Lordships Safety and Seats in this House: For I beseech your Lordships to consider, whither such a Precedent may go hereafter? What the House of Commons may do in such a Case, there is no Question but his Majesty may do the same by his Attorney; and what either of them may do against one Lord, they may do against more; (and we have seen it done in our Days against

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all the Bishops at once.) Were it not very precariously then that your Lordships hold your Seats here, when by either of these Ways as many of your Lordships, as for a time it might be convenient to remove, should be at the Mercy of having a thing call'd Treason, whether it be so or no.

Truly, my Lords, I have reason to believe that in the House of Commons the Matter of my Charge (if proved) was not thought to amount to Treason, either by Statute or Common Law; and I hope your Lordships have too sad an Example in your Memory, ever to assist the making of Treason by Accumulation.

I should therefore not only wrong my own Innocence, but the Right of the Peers, to submit to answer Matters of Misdemeanour, as a Criminal in Treason.

My Lords, I wonder not at the malicious Prosecution of those who would have me taken for what they truly are. For I am well assur'd, that neither the *French* take me to be of their Interest, nor the Papists to be of their Religion: But I am troubled to fall under so severe a Censure of the House of Commons, altho' I cannot blame them, but my Accusers, who have so wrongfully inform'd them.

My Lords, I will conclude with this Comfort, That I do not in the least apprehend the Matter of my Charge under the Security of your Lordships Justice; and will therefore trouble your Lordships no longer at this time, but only to pray your Directions whether I am to withdraw, which I shall readily obey.

*The Earl of DANBY's Arguments at
the Court of King's-Bench, upon
his Lordship's Motion for Bail, the
27th Day of May, Term. Pasch.
1682, &c.*

Immediately after his Lordship was in Court,
the Return of the *Habeas Corpus* was read,
and Mr. *Saunders* (of Council for his Lord-
ship) did move the Court, That whereas
in *Easter-Term*, 1681. the Court had dismiss'd
his Lordship, with a *Declaration*, that they
would take into their Consideration,
till the Term following, what Answer they
would make to what had then been said to them
by his Lordship and his Council; he therefore
moved, That they might now accordingly
know the Pleasure of the Court, and that they
would be pleased to grant Bail to the Earl of
Danby.

But before the said Mr. *Saunders* could well
have pronounced the foregoing Words, the
Lord Chief Justice *Pemberton* did reprimand the
said Mr. *Saunders*, for having offer'd to impose
upon the Court what had never been said by
them; saying, That there was no such thing
as their having said, at any time, that they
would take the Earl of *Danby's* Case into far-
ther Consideration; for that they had told my
Lord of *Danby* the last time, That it was not
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in their Power to give him any Relief at all ; and that he therefore wonder'd, and must extremely blame Mr. *Saunders*, for moving the Court again in a Matter to which they had already given such a positive Answer ; and could not but admire, that he should so misinform his Client, as to give him any such Advice, which could only be to the giving both him and the Court an unnecessary Trouble.

To all which Mr. *Saunders* replied, That he humbly begg'd his Lordship's Pardon, if he had mistaken him ; for that truly he did understand, that his Lordship had declared that he would take time to consider of my Lord of *Danby's* Case till the following Term ; but that if it was a Mistake, he must beg his Lordship's Pardon, and did believe the rest of his Brethren took it so, as well as himself.

The Earl of *Danby* then spoke himself for about two Hours, and said to the Lord Chief Justice, That he met with an Objection, which he did not expect ; and that he must beg his Lordship's Pardon, not to let that pass for a Mistake, which his Council had affirm'd, of the Court's having taken time to consider of his Case, till the next Term after that of his Lordship's being last there ; for that his Lordship did therein appeal both to the rest of the Judges, which were upon the Bench with him, and to all other Persons whatsoever, who were then in Court, whether his Lordship had not said, that if he (meaning the Earl of *Danby*) pleased, they would take time to consider of his Case till the next Term ; and he did declare upon his Honour, that those Words had been pronounced to him by my Lord Chief Justice himself, and that

that he did then accept it as a Favour from the Court, and did return his humble Thanks to them for it : Infomuch, that his Lordship said, That he confessed he was very much surprized to meet with such an Introduction at the first Entrance into a Matter which he conceived to be of so great Weight, as he doubted not but he should make this Case of his appear to be.

But yet, that it did give him Reason to believe, that he came with some Prejudice before his Lordship, and that they were so much prepossessed in this Matter, that if he did not think every Man in *England* would find that he might be concern'd in what Resolution should be given in this Case, as well as himself, he should scarcely have ventured upon it, though he had lain so long under so unreasonable a Confinement, as he took himself to do ; and therefore he must desire their Lordship's Patience and Attention to what he had to offer in his own Behalf, and (as he believed) in the Behalf of the *Liberty of the Subject* in general.

His Lordship, directing himself to the Lord Chief Justice, said, It was just now a Year since he was before his Lordship in this Court; and that he was assured, that his Lordship did then please to tell him, That they would take Time to the following Term to consider of what they should think fit to do in his Lordship's Case: But he said, that Care was then taken the first Day of that following Term to prevent his coming there, by an *Indictment* which was brought against him (*ready cut and dry'd*, as he had been told) for his being

privy to the Murther of Sir Edmund-Bury Godfrey.

He said he did not wonder at it, because there was nothing so *black*, which had not been Invented to be said against him; but, he confessed, he did wonder to hear, that such an Evidence of an *Irish Papist* (who was upon Trial for his own Life, and upon an *Hear-say* only) should be believed against an *English Protestant*, by a Jury of *English-Men*, and some of them *Gentlemen*; but yet that Wonder had been much abated, when he heard that the same *Foreman* had been as favourable in the Case of a *Notorious Murther*, as he had been ready to find that *Murther* against him, which had not the least *Probability* in it, and which no Man could think of with more Detestation both of the *Fact*, and of any *Man* that could have an hand in it, than himself.

However, this prevented him from coming there again, till after Notice had been given to Sir Edmund-Bury Godfrey's Brothers, to know if they had any thing further to say against him on that Matter, and that he could get himself Discharg'd from that *Indictment*; and as to the Wretch himself, *Fitz Harris*, (who had accused him) he did Two Days before his Death, send the *Minister* of the *Tower* to his Lordship, to beg of him, that before he died, his Lordship would forgive him his having sworn falsely against him; and he did confess, that he was put upon it to *save his own Life*; and did say by *whom* he was prompted to it. And whether it proceeded from those Men, who might think their Villanies discovered, and so might fear they could no way be safe but by putting that Matter yet farther against him,

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or from what other Cause, his Lordship could not tell; but (if his Lordship was not misinformed) he did hear that *some* Men were still endeavouring to get something more of the same Nature to be sworn against him, if they can contrive how to make their forg'd Testimonies to agree about it.

He said, he thought that Time would have tired out the Malice of such *Blood-suckers* before now, whom he had found so busy, for the first Year and Half after his Imprisonment, that he was not a Week without Endeavours used by strange People to get to speak with him, and such as he had Reason often to suspect to be *Knights of the Post*; amongst whom the Story of one *Magrath* (another *Irish-Man*) he said, was notably remarkable, in his Endeavour (under Pretence of Kindness) to have made him their *Tool*, to prove, that Sir *Edmund-Bury Godfrey* had killed himself: But he said, he had the good Fortune immediately to detect that Villany, as he hoped yet to live to do of *some* others; but that in the mean time he foresaw, that he was always to be a particular Object of the Malice of such Men, so long as he was left under this *Confinement*, from which he saw no Hopes to be relieved, but by that Court, where the Law directs every *Englishman* to come for Justice, that is oppress'd in his Liberty.

He said he hoped his Lordship would forgive him for having been a little tedious on that Subject of Sir *Edmund-Bury Godfrey*, because his Reputation had been so much exposed in that Particular, and before that Court.

After his Discharge from that Indictment, he said there seem'd to be a Probability of the Call of a *Parliament* in some short time; and whenever he could give himself the least Hopes of that, he resolv'd to trouble no other Place: But that now he had not the least Prospect of that kind; and that he had been a Prisoner above Three Years, and yet could safely swear, he was without the Knowledge to that Day, for what real Crimes he was Committed; only he knew that the Name of *Treason* had been laid to his Charge, without saying wherein the *Treason* consisted.

He said he came, therefore, now to that Court (as the only proper Place for all Persons to resort to for their *Liberty*) and he was sorry, that he was put to the great Disadvantage of speaking in his own Cause. But because he saw the last time he was there, that some Fault seemed to be found with his Council, for urging things which seemed to relate to Matters of *Parliament* (although upon a due Consideration of his Request, there is nothing in it which does touch their Jurisdiction) he had chosen rather to rely upon the Court's Pardoning his Defects, than put any further Hardships upon those Gentlemen, who had been his Council, to whom he had been more beholden, than they had been to him; for that they had undergone some unheard-of *Rebukes* already in another Place, for offering to be of Council with him, (though in Matters of Law) which he believed had never been heard of, but in his Case; and he hoped, that (when all his Circumstances shall have been well considered) he shall be the last *Englishman* that will ever have so many
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Hardships put upon him ; as will appear to be through every Part of his Case.

In the first Place he said , that he had been both Accused and Committed , without any Oath or Affidavit made against him , for any Crime whatever : Which had been in the Case of no other Lord but himself, and he did believe of no other Man.

Secondly, That there was no particular Treason mention'd in the Articles against him , only the word TRAITEROUSLY had been applied to things which were not Treason , if they had been true (as was then declared by Sir William Jones, the King's Attorney) and he said, there were good Store of Witnesses to prove , that when it could not be maintained by Argument in the House of Commons, that any of the Crimes mentioned against him were Treason ; It was answered by one of the long Robe there, (who would not have spared to have assigned the Treason , had there been any) that however they ought to give the Title of High-Treason to the Articles, for that otherwise they would dwindle to nothing when they came into the House of Peers. Now in the Impeachments of the other Lords (not to meddle with the Truth or Falsity of their Accusers) they were charg'd with the highest Treasons in Name, and upon Oaths made against them.

Thirdly, When a short Day was set by the Lords for his being heard ; and that he appeared that Day accordingly, his Council was then threatned if they did dare to plead Matter of Law for him : Which he said was never heard of before in any Man's Case whatsoever, nor in the worst of Times.

Fourthly, He said if all the Articles had been true against him, and had been Treason; he had his Majesty's *Pardon* (which he then shewed to the Court, and demanded the Benefit of it) saying, That that did Pardon both his Crimes (if he were Guilty of any) and his Imprisonment; and yet, that both that *Pardon* and He, had been Prisoners together for above three Years (of which he said he durst confidently affirm, that his was the first Precedent since the Conquest.)

Fifthly, He set forth, that he had not only his Majesty's *Pardon*, but that there had been his Majesty's *Declaration* of it in his *Speech* to his Two Houses of *Parliament*, together with a *Declaration* of his Innocency, and a *Declaration* that he would give him his *Pardon* Ten times over, if that were defective either in *Matter* or *Form*. And in this also he said that his Case was not only particular from any others, but that such *Declarations* of the King's Intentions to pardon, (although the *formal* Pardons have not been obtained) have heretofore been alone a Ground to procure Bail at least; when the Party has been the King's *Prisoner*, and at the King's *Suit*; which he supposed was not doubted in his Case.

Sixthly, He said that he had not only been thus Committed, and thus detained for above 40 Months, but he had been kept a Prisoner without any Prosecution for the greatest part of that time; which is another sufficient ground by the Law for Bail: But instead of a Restraint *Ad Custodiam*, he said he had undergone Punishments greater than the Crimes alledged against him could have deserved, if they had been true;

true; both by the length of his Imprisonment, which was agreed to be a sufficient Ground for Bail, both by the King's Council and the Prisoner's, in the Arguments on the Grand *Habeas Corpus* 3. Car. as also in *Melvin's Case*, 1. Car. and in *Sir Tho. Darnell's* and other Cases.

By the Inconvenience of his Accommodations in the Prison, for above Two Years and a Half of the time.

By Two most dangerous Sicknesses in the Prison. And

By the loss of divers of his Family since his being in Prison, who would some of them most certainly not have been in those Places where they have been lost, had he been at Liberty.

He said he was informed, that his Majesty had been again pleased to give his Directions to Mr. Attorney, to give his Consent a Second Time to his Bail, and he did beg leave to ask Mr. Attorney if it were so? Whereupon Mr. Attorney did stand up, and say, that he had his Majesty's Directions to give his Majesty's Consent again to his Lordship's being Bailed.

His Lordship did thereupon say, That this also was Particular in his Case; and he did believe, there was scarce a Precedent in the World, of the King's Prisoner, and at the King's Suit, not being Bailed when there hath been the King's Consent to it; unless where the Prisoner hath not been able to find sufficient Security for his Appearance to abide his Trial. For that the two only justifiable Grounds for the Continuance of Restraint by the Law are, either for keeping the Party from being able to do any harm by his being at Liberty, (of which
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the King is the best Judge) or for securing the Party to abide the Judgment of the Law, (in which the Court ought to have good Satisfaction) and so they might have sufficiently in his Case.

He said, that the Precedent would be no less strange and new against the King, than against himself, if they should not permit him to be Bailed under such Circumstances: For he had heard, that the Law did admit of no *Absurdity*; Now he did desire to know, how any thing could in Reason be more *absurd* on behalf of the King, than if the King's Prisoner and at the King's Suit, should be kept in Prison by any of the King's Courts, against the King's Will?

Or how, said he, can any thing be more dangerous to the Subject, or be a plainer *failure* of Justice (whatever may be pretended to the contrary) than to say, That there can be any such Restraint of *English Liberty*, as cannot obtain so much as Bail, but by the leave of the House of Lords? When that House can neither meet but when the King pleases, nor can never sit longer than he pleases: So that to say a Man shall be a close Prisoner (I mean by that a Prisoner without Bail, for Bail it self is Imprisonment in the Eye of the Law) till he shall be discharged by the House of Lords; is to say, that a Man shall be a Prisoner during the King's Pleasure; which was the Great Grievance complained of, when the *Petition of Right* was granted, and that was thought to have fully and for ever Redressed that Grievance.

But if after so many Heats and Disputes which our Ancestors have had with the Crown about their Liberties, this Doctrine should now be

be admitted for Law; We would seem to endeavour, (as much as in us lies) to bring it to this Conclusion, and be our own Felo's de se; That the King shall have a way found out by our selves, and without his seeking, how he may Imprison any Man, or number of Men, when he pleases in a Parliamentary way; and by Dissolving that Parliament, he may keep them as long as he pleases in a Prison without Remedy: But that he shall neither have Power to Relieve us himself by his own Authority, nor by his Courts of Justice. So as in short by this Doctrine, The King should only have Power to hurt his Subjects as much and as long as he pleases, but should not be able to do them any Right if he would; and then we shall have *Magna Charta* and the *Petition of Right* Revers'd, instead of receiving that Benefit by them, which the Kings of England have been so Gracious as to give us, and all the Learned Writers upon those happy *Laws of Liberty* have told us we are secure under, at all Times, and against all Accidents whatever.

He then begg'd Leave to observe to his Lordship what he found in my Lord Chief Justice Coke's Comments upon *Magna Charta*; who said, That the Words *Nulli Vendemus, Nulli Negabimus, aut Differemus Justitiam vel Rectum*, are spoken in the Person of the King; who (in Judgment of Law) is always present, and repeating the said Words in all his Courts of Justice.

And therefore (says he) every Subject in the Realm may at all times have Remedy by the Course of the Law; and may have Justice done Freely, Fully, and Speedily, without Delay; for that Delay is a Sort of Denial.

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The said Lord Coke observes further, That those Words of *Magna Charta* are fully Expounded by latter Statutes; (*viz.*) 20. E. 3. &c. which do direct, That there shall be no Delay nor *Hindrance* of speedy Justice to any Man, neither by any *Seal*, nor by any *Order*, nor any *Writ* whatsoever; neither from the King, nor from any other, nor by any other Cause.

Now, whatever may be said out of other Considerations, he said, No Man can deny, but that there is great Delay of Justice (to say no worse of it) to any Man who (through no Neglect of his own) can neither get *Trial* nor *Bail* in above Three Years, altho' his Crimes were never so great. And he said, he durst be confident, that the Makers of *Magna Charta* did believe they had secured all *Englishmen* from ever being under the Possibility of such a Danger; and that he made no Question at all, but that by Law we are so.

He said, That the said Lord Coke does say in his Comment upon the 15. W. 1. (where he speaks of what Things are Bailable, and what are not; and names Treason amongst the Things not Bailable) that is (says he) such Offences shall not be Replevied by the Sheriff; but all or any of these, he saith, may be Bailed in the *King's-Bench*.

And he said, he had also some of the present Judges Opinions to shew, in this Point, which he desired to Read out of a Copy of the Lords Journal, (*viz.*) 23d. Decemb. 1678. The Question being put, Whether the Lord Treasurer should withdraw? It was carried in the Negative. And on the 27th of the said December, The Question being

being put, Whether the Earl of Danby, Lord High Treasurer, (who stands Impeached by the House of Commons) should be Committed? It was Resolved in the Negative.

And it was the same Day proposed to the Judges, Whether the Judges can Bail any Person, in Case of Misprision of Treason, wherein the King's Life is concern'd?

To which Sir William Scroggs (Lord Chief Justice of the King's Bench) Sir Francis North (Lord Chief Justice of the Court of Common-Pleas) Justice Windbam, Justice Jones, and other of the Judges then present, gave severally their Opinions; That the Court of King's Bench may take Bail for High-Treason of any kind, if they see Cause.

He cited the Lord Coke also in his Comment on the 24. W. 2. where he says, That it is a Rule in Law, *Quod Curia Regis non debet Desercere Conquerentibus in Justitia Exhibenda*. And the Reason of this is, that a Failure of Justice may be prevented; which, he frequently says, is *Abhorred by the Law*: So as it appears, That the Law abhors all Failure of Justice; and he said, That if such Failure do appear in his Case, or any Man's else; no Order can license such Failure, nor no Court can Justify the not Giving Relief against it: And he said, he should either make such Failure appear, or his Lordship (meaning the Lord Chief Justice) would be able to tell him where he might repair for Justice; which both *Magna Charta* and the *Petition of Right* are understood to have provided at all times for the Subjects Liberty: But if his Lordship could not inform him where he might appeal forthwith for his Liberty;

Liberty in that Case, he said, that for that Reason alone (were there no other) he ought of *Right* to be admitted to Bail by that Court; till he could be brought before such a *Judicature*, as had Power to discharge him.

He observed also, that the Lord Coke (in a Chapter on the *King's-Bench*) did say, That that Court might Bail for any Offence whatsoever: And that in the said Chapter it was particularly observed, That there had been such Care taken by the Law to avoid *Failure of Justice*, (even in small Matters, in Comparison of Liberty) that he gives there an Example concerning a *Clerk* or *Officer* of that Court: For he takes notice of what Things, and against whom, that Court hath Power to hold *Plea* by *Bill*. And amongst those, he names against any *Officer* or *Clerk* of that Court; and gives the Reason: Because if they should be Sued in any other Court, they would have the Privilege of that Court, which might be the Cause of a *Failure of Justice*. And from this his Lordship said it did appear, That the Law intended that there should be no *Failure of Justice* by the Privilege of any Court, how great soever it was; for that (as was said before) the Law did abhor all *Failure of Justice*. And he said, if such Care had been taken against a *Failure*, in such small Matters, and not in what concern our Liberties; all *Englishmen* ought justly to break out into the like Exclamations, as the same Lord Coke and many others did, in their Speeches in Parliament, and in their Pleadings, 3. & 5. *Car.* upon the Arguments of the Grand *Habeas Corpus* at that time: Where the Lord Coke breaks forth into
this

this Expression ; *Shall I have an Estate of Inheritance for Life, or for Years, in my Land ? And shall I be Tenant at Will for my Liberty ? Shall I have Property in my Goods by the Laws ; and not Liberty in my Person ?* And thereupon he tells us, *That Perspicue vera non sunt probanda ;* As taking for granted, That our Liberties were not to be doubted, where our Properties were so secured : And the King (says he) had distributed his Judicial Power to Courts, and to his Ministers of Justice ; *Who are to see Right done.*

And he said, The Lord Coke gave the Reasons of those Laws which are against undue Imprisonments ; and that one of those is, *For the Indefiniteness of Time ;* which, he says, may be perpetual during Life : And that his Words are, *That it is unreasonable to think, that a Man has a Remedy for his Horse or Cattle, (if detained) and none for his Body indefinitely Imprisoned : For that a Prison without any prefixed Time, is a kind of Hell.*

And here his Lordship said, That he hoped the Court would either allow him Bail, or tell him a prefixed Time, when he should be Tried or Discharged. He did then also Quote the Case of the Duke of Suffolk, 26. H. 6. and the Opinions of Prescot and Fortescue, (who were eminent Judges) who said, That he ought not to be Committed, (tho' for Treason) without Especial Cause of the Treason shewed ; which had not been in his Case.

He further said, That many other Principal Gentlemen of that Parliament had spoke most sensibly on the same Subject of Liberty ; and amongst the rest, Sir Robert Philips had said,
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To have our Liberties (which are the Souls of our Lives) taken from us, and to be pent up in Gaols without Remedy by Law; and this to be so adjudged, (for so that Court had then thought fit to deny Bail, for Reasons which were at that time also best known to themselves) he cries out, *Oh Improvident Ancestors! Oh Unwise Fore-Fathers! To be so curious in Providing for the Quiet Possession of our Lands, and to neglect our Persons and Bodies! And to let them lie in Prisons! And without Remedy, durante bene placito! If this be Law, what do we talk of our Liberties? This (says he) is Summa Totalis of all Miseries.*

He said also, That Mr. Selden did in the same Parliament argue at a Conference with the Lords, That in all Cases where any *Right* or *Liberty* belongs to the Subject, by any *Positive* Law, written or unwritten; if there were not also a Remedy by Law, for enjoying or regaining of this *Right of Liberty*, when it is violated, or taken from him; the *Positive* Law were most vain, and to no purpose; and it were to no purpose for any Man to have any *Right* in Land, Liberty, or other Inheritance, if there were not a *known Remedy*, by which in some Court of *ORDINARY JUSTICE* he might recover it; and in this Case of *Right of Liberty of Person*, if there were not a Remedy in the Law for regaining it, when it is restrain'd; it were to no purpose to speak of Laws.

Here he desired Leave, to shew his Lordship what Sir Nicholas Hyde (when sitting as Lord Chief Justice in that Court) did say on this Occasion; viz. That the King's Pleasure

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is, his Law should take place and be executed; and for that do we sit here: And whether the Commitment be by the King, or others, This Court is the Place where *the King doth sit in Person to do Right, if Injury be done*; and if it appear that any Man hath Wrong done to him by his Imprisonment, We have Power to Deliver or Discharge him. And he further said, That the same Lord Chief Justice, Doderidge, Jones, and Whitlocke, (Answering the Prisoners Council at that time) did say, the Attorney-General had told them, That the King had done it; and that they (the Judges) do ever trust him in great Matters. And here he took Occasion to say, That he hoped that the King's Consent to his Bail, and his Declaration of his Innocency, would be now as much trusted in this Court.

He Cited also the Arguments of Mr. Calthorpe for Sir John Corbet, on the same Occasion; who said, That, admit the Commitment were lawful; yet when a Man hath continued in Prison a reasonable time, he ought to be brought to Answer, and not to be continued still in Prison: For that it appears by the Books of our Laws, that Liberty is a thing so favour'd by the Law, that the Law will not suffer the Continuance of any Man in Prison, longer than of Necessity it must.

He Cited also Mr. Hackwell; who said upon the same Occasion, That the Law admits not the Power of Detaining in Prison at Pleasure, when the Imprisonment is but *Pro Custodia*; For a Man, by long Imprisonment, might otherwise be Punished before his Offence. And

he mention'd an Expression of his, That long Imprisonment was *Vita peior Morte.*

He mention'd how the Commons, at the End of the Parliament 3. Car. did desire, That the Judges might declare themselves upon the Matter, why those Gentlemen had not been Bailed, when (by the Judges Arguments) it was possible they might have been kept Prisoners all their Days.

To which, he said, *Whitlocke* answer'd, First, Not so; but they did Remand them, that they might better advise of the Matter; and that the Gentlemen, if they had pleased, might have had a new Writ of *Habeas Corpus*, when they thought fit. And Secondly, That he had spent much Time in this Court; and that in such great Cases, he never knew any Man Bailed without the King first consulted in it: And the same he said, was then said by the rest of the Judges of that Court.

Hereupon he made Two Remarks: First, That by this it did appear, that upon Consideration, That Court had alter'd their Opinions in the Case of Bail, just contrary to what their first Opinions had been positive in: And Secondly, That the Consulting of the King was ever necessary in such Great Cases. And he said, he did believe, that there was not a President, where the King had agreed to the Bail, that ever it had been denied.

He said, That those Men whom he had quoted, were Men of no Ordinary Understanding in the Laws: And as the Judges then did at last acknowledge their Sense of them to be right, so he said, He hoped our Laws were neither changed nor diminish'd, in what related

related to the *SUBJECTS LIBERTIES*; and he hoped that no Order of one House, nor Ordinance of both Houses, nor King alone, nor King and either House alone, could alter them: And he rested assured, that a King and Parliament would never alter them to the Prejudice of Liberty.

He proceeded, That if the Law were still the same it was heretofore, it was plain that that Law did both give a Power to that Court to Bail for all Offences whatsoever, (and for Treason particularly) and did require, that the Subject should at all times find Remedy in it, when his Liberty was Restrained, *BY ANY CAUSE WHATSOEVER.*

The Chief Reasons, he said, why such large Powers had been given to that Court, were principally for avoiding all Failure of Justice; and to the End, First, That the King may both have a Means of giving Right to his Subjects at all times, according to his Oath at his Coronation, and according to the Intent of *Magna Charta*, and the *Petition of Right*. And, Secondly, That there might be a constant Place for the Subject to resort unto for Remedy at all times, whensoever he was oppress'd in his Liberty: And he hoped we were not now to learn a new Law, That the King could neither keep his Oath, nor maintain *Magna Charta*, nor the *Petition of Right*, without the Assistance of an Extraordinary Court, which he may both chuse, whether he will call, or when he will call it, and how long it shall sit, which (as he had said) would put all under the King's absolute Will.

He then said, He took for granted, that there would be no Dispute made in this Matter, but that there was an Order of the Lords which was supposed to stand in the way: But he said, If his Lordship would give him Leave, he would first say something to the Order it self, and then he hoped to show his Lordship, that it stood not at all in the way, as to his Request of Bail; and that it should neither be interferred with in the least, nor the Jurisdiction of the Lords, nor their Proceedings meddled with in any kind by his being Bailed; but rather owned, and submitted to, by his being Bailed to the Parliament.

And, first, for the Order it self, He desired the Court to observe, that it was Dated the 19th of March, 1678. and worded as followeth, (*viz.*)

Die Mercurii, 19^{to}. Martii, 1678.

THE House this Day taking into Consideration the Report made from the Lords Committee for Privileges, that in Pursuance of the Order of the 17th Instant to them directed, for considering whether Petitions of Appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on; and for considering of the State of Impeachments brought up from the House of Commons the last Parliament; and all the Incidents relating thereunto; upon which the Lords Committees were of Opinion, That in all Cases of Appeals, and Writs of Errors, they continue, and are to be proceeded on in Statu quo, as they stood at the Dissolution of the last Parliament, without beginning De Novo. And that the Dissolution of the last

last Parliament doth not alter the State of the Impeachments brought up by the Commons in that Parliament.

Now upon this Order, he observed, That it related as well to Appeals and Writs of Error, as to Impeachments; and seemed to be more fully worded to them, than to Impeachments: The Words STATU QUO, and *without beginning* DE NOVO being annexed in the Order more particularly to the Appeals and Writs of Error; whereas all that was said as to the Impeachments, he observed to be, that the Dissolution of THAT LAST PARLIAMENT doth not alter the State of Impeachments brought up by the Commons in THAT PARLIAMENT, and are not Words which (strictly taken) can bind after the Dissolution of any other than that Parliament.

But he said, If the Order should be Expounded otherwise, yet that both the Law, and the Practice of the Inferior Courts, were undoubtedly contrary, In the Cases of Appeals and Writs of Error. And, he hoped, no Court would take upon them to Expound the Order so, as if they were at Liberty to split the Order, and to judge, which Part of the same Order should be binding, and which not; for that would be to meddle, in a more extraordinary Manner, with the Proceedings of the Lords, than he had desired.

Now, as to Writs of Error, he said, there were full Resolutions of the Judges in the Case, tho' in times of Prorogations only, when a Day is set for the Sitting of the Lords House; and he cited the Case of Heydon and Godsalwe,

in *Croke's Reports*; as also the Lord Chief Justice *Hale*, who did not only grant Execution upon a Writ of Error (depending in Parliament) but did also answer the Defendant's Council (who would have pleaded the Lords Order in Bar of the Execution) that he should always pay all due Respect to that Superior Court of the Lords; but that he must act according to Law; and, that he knew, that the Lords did not intend otherwise. And of this Lord Chief Justice *Pemberton* himself, who he said had denied Restitution upon an Execution lately taken out, in Case where a Writ of Error was, and is still depending in Parliament. And in *Cases of Appeals*, he said, he was inform'd, that the Court of Chancery did not take any Notice of the Appeal being in Parliament after a Dissolution, but did notwithstanding proceed to Sequestration. And he said, that there was a late Precedent in the Court of Exchequer, in the Case of one *Fountaine*, where an Appeal was brought from a Decree in the Exchequer, and Recognizance entred into by the said *Fountaine*, to abide the Order of the House of Lords; and after the Parliament was Dissolved, the Council of the said *Fountaine* did insist on the said Order before the Barons, That the House being possess'd of Mr. *Fountaine's* Cause, and Security having been given by him to abide the Order of the House, that no Proceedings ought to be had in the Exchequer upon the said Decree, until the Matter on the Appeal was determined before the Lords. Notwithstanding which, and that Mr. *Fountaine* produced the Lords Order in Court, and produced the Security allow'd; yet the now Ba-

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rons declared and ordered, That the Decree by them made, should be proceeded on against the said *Peauvaine* in the Court of Exchequer. And a Proceeding hath been had accordingly.

By all which he Observed, That the Inferior Courts did proceed upon Matters, forbidden much by the House of Lords, in the Matters of Appeals and Writs of Error, as it was upon Impeachments; and yet that the Reason was plain why they did so, for that the Parliament might proceed again upon the same Appeals, and Writs of Errors, notwithstanding those Proceedings in the Inferior Courts, in the Interval of Parliaments; for that none of those Acts of the Inferior Courts, does so hinder the Proceedings of the Superior, but that the Plaintiff in Parliament may revive the same Matter there again, by *Scire Facias*, or by *Re-summions*, &c. But he said, It was never heard of, that the Lords themselves did proceed again *Ex Officio*, without the Petition of the Party to revive the Cause. And so he said in the Case of Impeachments, that the Lords would no more proceed *Ex Officio* upon that neither, unless they were called upon by the Prosecutors; and then their Lordships Proceedings upon the Impeachment, would be no more hindered by the Bailing of him in the Inferior Court, than they were in the other Cases by the Executions and Sequestrations, which are granted in the Intervals of Parliament, which were for the Prevention both of *DELAY*, and of *FAILURE* of *JUSTICE*.

Besides, he said, If this should not be done, how could it be known, whether the Prosecutors of an Impeachment from the House of

Commons (who are never the same Men in a new Parliament,) will proceed any more upon a Former Impeachment? For, he said, it had many times fallen out otherwise; and he cited a late Case of the Lord Mordant, who was Impeach'd upon Articles in one Session; and having taken out a Pardon during the Prorogation, was never more called upon, nor never question'd upon the former Impeachment; although the very same Parliament sat again, which had Impeach'd him: And therefore, he said, That the Case might more probably happen to fall out so, when a new Parliament should meet again, which would consist of new Men.

He said, It was likewise to be observed, That although the Transcript of the Record in a *Writ of Error* might have Days of Continuance, yet no *Supersedeas* is grantable; and he said, That if the Lords Order be no Ground for a *Supersedeas* on a *Writ of Error*, why the lying of an Impeachment should be a Ground for Confining a Man within Tower Walls all his Life, he was sure must be both less reasonable and less just, as Liberty was more valuable than Property, and without which, Property could be of no Comfort.

In the next Place he Observed, That if the Order should be continued literally to mean, that the Impeachments, as well as the Appeals and Writs of Error, (and the Incidents relating to all of them) should remain in the same State they were at the Dissolution of *THAT PARLIAMENT* mentioned in the said Order, his Case thereupon, he said would be quite different from any others; for that he was not under any
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Commitment at the Dissolution of THAT PARLIAMENT, nor at the time when THAT ORDER was made, but was then at Liberty to be a Sitting Member of that House, and by a Vote of the House, had Leave to continue so; for that (as he had already observed) the Date of the Order was the 19th of March, 1678. and the Warrant of his Commitment did appear by the Return before the Court to be the 16th of April following: Insomuch, that he desired the Court to take Notice, that the strict Letter of the Words Statu Quo in the Order (compared with the Time when the said Order was made) would be an Argument to set him in a State of Liberty, as he then was.

He then told the Court, That by what he had said, he hoped he had made appear, that the Order did not afford the least Shadow for the hindering of his being Bailed; but that on the contrary, the Reasons were much stronger for the doing of that, (as it related not only to him, but to the Liberty of the Subject in General) than for the Proceedings which the Inferior Courts do daily practice upon Appeals and Writs of Error, (*which are but for Property*) and are comprized in the same Order; and therefore he said, That, he hoped, he should at least find the same Favour in a Case of Liberty, which is allow'd every Day in Cases of lesser Moment.

He then said, That altho' it did not concern his particular Case, yet for the sake of *English Liberty it self*, he could not but say something further upon this Point: For he could not but be of Opinion, That if the Order had directly forbid Bail; which it was far from doing

ing ; and besides, the Lords own Practice had shew'd their Meaning to the contrary, by the Bailing of a Commoner, whose Crimes were declared to be greater than his ; and in which Case they made no *Non Obstante* to their Order, but take that to be still in the same Force towards him, as towards any others who are in Custody : Yet he said, In that Case, if such an Order should be found to be against *Magna Charta*, and the Fundamental Right of the Liberty of the Subject, (as any thing must be, which does Subject any Man to an INDEFINITE IMPRISONMENT;) he conceived, that of Right that Court ought to free any Man from such a Slavery ; for he said, he could give it no better a Name. And he then Cited an Argument of the Earl of Shaftsbury's upon that Point, which that Lord argued in that Court upon an *Habeas Corpus* ; when the Court agreed they would have Bailed him, had it not been in a Time of an *Adjournment* only of the Parliament. His Words he said, were, *That this Court will, and ought to Judge AN ACT OF PARLIAMENT VOID, if it be against MAGNA CHARTA; and more might it Judge of AN ORDER OF THE HOUSE OF LORDS, that is put in Execution to deprive any Subject of his LIBERTY.* And as he said, this could not be denied to be Law ; so he was confident the Earl of Shaftsbury was still of the same Mind, and so must every Lord in England be, or (when they consider their own Cases) they would make their Liberties to be very precarious.

He proceeded to say, That the Earl of Shaftsbury being all w'd to be a knowing Man,

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both in the Laws, Orders, and Constitutions of Parliaments; he would beg Leave to quote another Part of the same Speech: *Viz. That Mr. Attorney* (which was then Sir William Jones) *was pleased to Answer the Instance of one of his Lordship's Council, That if a Great Minister should be Committed, he hath the Cure of a Pardon, a Prerogation, or a Dissolution; But (says the Earl) If the Case should be put, why Forty Members, or a greater Number, may not as well be taken without any Remedy of any of the King's Courts? His Lordship said, That Mr. Attorney could not very easily Answer. And if in this Case (says he) there can be no Relief, no Man can foresee what may be hereafter. And in another place of the same Speech, he says, He does not think it a Kindness to the Lords to make them Absolute, and above the Law; for so it must be, if it be Adjudged that they may Commit a Man to an INDEFINITE IMPRISONMENT.*

He said, He took these Men whom he had named, for no small Authorities in this Age: And the Earl of Shaftsbury, he said, was a Man still as much for the Maintaining of this Order as ever; but that his Lordship did shew himself at the same time to be for English Liberty: And he plainly shew'd his own Sense, both of this, and of all Orders whatever, which concern'd the Liberty of the Subject; and declared, That he took that Court to be the proper Judge of all such Orders.

He said, It thereby appeared how sensible that Lord was, that such Cases might concern Forty as well as One, and Members of either House, as well as other Men; and without Relief, if it should be admitted, that ORDINARY

NARY COURTS could not Relieve. And the Earl of Danby said, That there was no Answering of these Arguments of the Earl of Shaftsbury; unless it could be denied, *That the King can Impeach as well as the Commons; or that the King cannot Call and Dissolve Parliaments at his own Will and Pleasure:* For if he may (as was not to be doubted) he said, He was sure every Man in England was in the same Danger, when the King pleased; and then he saw nothing whereby we had any Security; but that we lived under a King who would not Exercise this Power over us, which we will needs put into his Hands, altho' he does not desire it himself. As if we were so weary of our Liberties, that we would be Industrious in Contriving how we might insensibly slide into those Slaveries, which our Ancestors have been some Ages taking Pains to secure us from, and our Kings have been so Gracious as to Grant and Confirm to us, so many times over as they have done; and which other Kings may be as ready to reassume hereafter, as we are to give them away.

He concluded his Observations upon that Speech of the Earl of Shaftsbury's, with taking Notice, That his Lordship had shew'd he was one of those Peers who would take it for no Kindness to be made Absolute, and above the Law, by such Orders of theirs being construed to extend to *INDEFINITE IMPRISONMENTS.*

He then repeated Sir William Jones's Declaration in that Court; *That either a Pardon, a Prorogation, or a Dissolution, was a Cure against such Imprisonments.* And he observed thereupon,

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on, That if that Doctrine were true, *That any one of those was a Cure against such Imprisonment,* (and he could not doubt of its being good Law) then certainly he ought to find Relief from his Imprisonment, *who had every one of those Cures on his Side.*

He then desired to put the Court in mind, How in the worst of Times, Justice had taken place so far, as to *lay aside the Force of Orders made in Parliaments, after the Dissolutions of those Parliaments which made them;* altho' it was to the Prejudice of the Interest of those Usurpers themselves.

He cited an Instance of one Sir John Stowel, who by the Articles of Exeter was to have been admitted to Composition for his Estate; but yet contrary to those Articles, the Parliament did afterwards order his Estate to be sold. After the Dissolution of which Parliament, Sir John Stowel pleaded by his Council (*which were Serjeant Maynard and Mr. Latch*) That that Order was Dissolved by the Dissolution of that Parliament; and that therefore the Articles were again in Force: And that the Plea was admitted to be good, and Sir John restored to the Benefit of the Articles upon that Plea, *even by Bradshaw himself.* But he said, he was sorry that he could neither have Sir William Jones, to argue those Points for him which he had used against my Lord Shaftsbury; nor Serjeant Maynard, to make good the Invalidity of Parliamentary Orders after Dissolutions: But he said, That it was not his Fault, and he doubted not but he was before more Just Judges than there was in those Ill Times; and that he hoped,

ped, *That the Liberty of the Subject was not now more Precarious than it was in those Days.*

He added, That if upon such Orders Men could not be Bailed in the Interval of Parliaments, they would become Grievances equal to the *Multiplications of Treasons* in former Days; which have sometimes been greedily made heretofore by Parliaments in Distemper'd Times; but the Commons had never been quiet, till they could get their Bear chain'd up, and their Laws reduced to the Old Standard of Treason again: But yet those Things had been done by Acts, and not by Orders of Parliament.

He desired them likewise to remember, That it had been one of the Chief Grounds of the late War betwixt the King and his Parliament, (in which so much Blood had been shed) That an Ordinance of Parliament should not be held equal to an Act of Parliament; and yet those were Orders of both Houses. And now, said he, shall we be Defending, That an Order of One House only shall be Equivalent to a Law? And shall be in Force against our greatest and most Sacred Laws of Liberty, which have been so confirmed to us? This, said he, I am not able to understand the Reason of; nor will any Man, who shall give himself the least Leisure to think upon it.

He then said, He desired to ask any Man that then heard him, or any Commoner of England, who would but take Time to consider this Case, (*which may be any Man's in England,*) Whether they would be contented to Invest the Lords with such an Inherent Power over their Liberties, which they can no more be exempted from than the Peers themselves?

And

And he said, That the Lords had already made it appear, that they would not have any such *Arbitrary Power* placed in them, for that they had refused to pass a *Favourite Act*, (which was for their own Trials) only by reason of a Clause which was inserted therein, *To have Enacted the Substance of this present Order into a Law.*

And he said, That the House of Commons desiring that such a Power might have been Enacted into a Law, (*though themselves would have been the first who would have repented such a Law,*) did sufficiently denote, *That the Commons did not think the Order would be binding in Law after their Dissolution; for otherwise what need was there of a Law; if the Order was in force after Dissolution, without a Law?*

Upon the whole he said, He thought the Distemper of that time had given more weight to the Order, than any thing else; and some of their Lordships on that Bench did know, both in what an Heat it had been made, and how it had been since blown upon by the Lords themselves; who he was confident would no more endure to have it Construed in that Sense which now seems to be put upon it, (*of Subjecting Men to be under INDEFINITE IMPRISONMENT,*) than they will endure themselves to be every Day put in the Stocks.

As he had said thus much to the Order it self, so he said, He hoped to make appear, *That the Court's Bailing of him would not at all Intrench upon the Order, nor meddle with the Jurisdiction of the Lords, nor their Proceedings in any kind.*

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For that he took it for granted, That what is done by that Court, and the Courts of *Chancery* and *Exchequer*, on Appeals and Writs of Error, was understood not to meddle at all with the Jurisdiction nor Proceedings of the Lords in those Cases; and that this was just the same, all being alike subject to the final Determination of the Lords, whenever they pleased to call the Appeal, Writ of Error, or Impeachment, before them, and without any Prejudice to their Lordships Proceedings by any of those Acts done by that or the other Courts in the Interval of Parliaments.

Besides, he said, It had been usual to Bail in that Court to the Justice Seat in *Eyre*, and yet that that Court could not proceed further.

He Instanced also, That Courts allowing of the Pardons of Peers, (when pleaded there) and yet that they had no Power to proceed to the Trial of a Peer.

And so he said, There were divers other Instances of that Court's Proceeding to such and such Degrees of Exercising their Power to avoid Delays, &c. where the Court had no Jurisdiction to determine the Matter.

Precedents he said were not to be expected, which were exactly fitted to his Case, because he durst be bold to say, there never was such a Case before, (when well considered in all its Circumstances,) nor he hoped never would be again: But he said, That therefore both the King's Power and the People's Liberties would be the more concern'd in what Resolution should be given by the Court in this Case of his.

He said, There were Precedents of Discharging of Men Impeach'd in Parliament up-
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on the King's Writ to that Court, Commanding the Proceedings to cease, and they have been Discharg'd accordingly by that Court, without any other Reason given in the Writ, but because the King held the Parties to be Innocent and Free from the Crimes charg'd against them. As in the Cases of *Melton* Archbishop of *York*, and *Gravesend* Bishop of *London*, 7. E. 3.

He mentioned also *Hugh Spencer*, and *Sir Thomas Berkley's* being Mainprised to Parliament, and yet that the latter was upon Suspicion for the Murder of a King, (*viz.*) *Edward the Second*.

He said, Inferior Courts had Bailed to Parliament about the Pope's Bull, &c. *Reg. Writ*, 274.

He said, A single Judge, (*viz.*) *Sir Robert Atkins*, had lately Bailed one for Treason, and another for Murder; and that he did himself hear his Justification of both allow'd (as to the Legal part) before the King and Council.

He said, That Kings had formerly abolish'd Accusations of Treason, and Instanced a Case of *Talbot* against *Ormond*, in the time of *H. 6.*

And to shew how powerful the bare Intention of Kings to Pardon had been heretofore, he Instanced the Case of a Man Indicted of Felony, who (without any Council) shew'd forth a Charter of Pardon to the Court, which was discordant to the Indictment, and also to his Name; and yet because the Court perceived that it was the King's Intention he should be pardoned, he was Remanded to get a better Pardon, 26 *Ass.* p. 46.

And he did thereupon say, That he hoped the King's Intention of Pardon as to him, had been sufficiently declared to the whole Kingdom.

And in short, he said, That, if the Matter was proper for the Jurisdiction of that Court, before it was in Parliament; its having been there, did not take away the Jurisdiction from a Competent Court, when the Extraordinary Jurisdiction fails; which was not to be supposed could lay all other Jurisdictions asleep, when it self was not in being; and especially when that Competent Court should do nothing in Contradiction to the Proceedings of the Extraordinary Court, as he hoped he had made appear, that that Court would not do by the Bailing of him.

Whereas on the contrary, he said it was most evident, that *Justice did fail in the highest Concern, (which is that of Men's Liberties)* unless he could be inform'd when and where he might certainly be either Tried or Discharged; for that (as he had said before) it was agreed both by the Council for the King, and the Council for the Prisoners, in the Arguments on the Grand Habeas Corpus, that INDEFINITE IMPRISONMENT was held to be PERPETUAL IMPRISONMENT, which the Law did admit in no Case where the Imprisonment was only AD CUSTODIAM. And although his had been intended but AD CUSTODIAM, yet it could not be denied, but it had already been ad Gravem panam, and without any particular Cause yet shew'd for which he ought not to be Bailed by Law.

He then said, That Littleton had declared in his Arguments, 5 Car. That if Treason in General

neral should be held to be a sufficient Return, yet that the King's Bench might Bail. And the said Litteran, and the King's Attorney, in their Arguments (one for the King, and the other for Mr. Selden) did agree; That where the Party could not avoid the Judgment of the Law, nor that there was no Danger by his being at Liberty, He ought to be Bailed after long Imprisonment; and at that time, Six Months was taken to be long Imprisonment.

He said he had read a Passage in the Lord Coke's Institutes, where he spoke of such Imprisonments as he compared to the Imprisonment of St. Paul by the Centurion, who first put him in Chains, and then enquired who he was, and what he had done.

He said he would not compare his Case to that; but that there was so much of resemblance in it, that he had been in Chains, or what was there meant by Chains (which was a Prison) for above Three Years, on a pretence of Treason, without being told to that day what kind of Treason he had committed; which had been done in no-bodies Case but his, and by so much the greater was his Hardship.

He had also both been Accused and Committed without any Oath made against him.

When a Day had been appointed for his Hearing, his Council had been forbid to Plead Matter of Law for him.

It had been acknowledged, that there was no Treason contained in any of the Articles against him, if they were all True.

And if they had been True, and had amounted to Treason, he had there shewed the King's Pardon, which did release both the Crimes and the Imprisonment.

That besides that Pardon, he had had his Majesty's Declaration in full Parliament, both of his Innocence; and that he would Grant him his Pardon ten times over if this were defective.

That he had now had his Majesty's Consent to his Bail, a second time, declared to that Court by the Attorney-General, by the King's Direction.

That in all these foregoing Particulars, his Case was singular, and different from all others, who are or have been made Prisoners since the beginning of the late Plot, or (as he believed) at any other time.

Besides these Things which are peculiar to his own Case, he said that there was also what was Common to other Cases as well as his.

The length of his Imprisonment, which had been above 40 Months.

The being Confin'd so long under pretence (as he conceived) of an Order of the House of Lords, which neither Directs nor Implies any thing to forbid Bail. But in that also he had what was Particular to himself (which he had already said, and desired leave to repeat, because it would deserve their Consideration,) viz. That he was at Liberty, and had leave to be a sitting Member in the House of Lords; at the Time when that Order did declare that the Impeachments, Appeals, &c. and the Incidents belonging to them should stand in STATU QUO; so that (as is already observed) the STATUS QUO (as to him) he

he again said, was to put him into a State of Liberty.

Lastly, he said, that he had no prospect now when any Parliament would sit, and by the Examples of past Parliaments he might reasonably fear, whether when they did meet, they might sit so long as to give him Relief; for that his Petition had been Read the first Day that the last Parliament entered upon any publick Business; or whether greater Business of the Kingdom might not (as it had done already) so take up their time, as not to give them leisure to consider the Case of a single Person: And since this had already fallen out to be his Misfortune in Three Parliaments successively, he took it to be but too plain a Demonstration of his lying under an Indefinite Imprisonment, unless he should find Relief in that Court, for that there was no other to Appeal unto.

He said, That in those Great and Eminent Cases which fell out 2 & 5 Car. about the Bailing of Persons Committed to Indefinite Imprisonment, the Judges were then very positive against their Bail, and yet changed those Opinions afterwards; and so he hoped that Court might do upon a due Consideration of his Case and Circumstances; or else he hoped that his Lordship would convince him, that his Imprisonment was not Indefinite, by letting him know at what prefixed time, and where he might resort for Remedy, which the Law does without question allow to all Men, and at all times.

He said he was a very reasonable Man, and when he was convinced by Reason (upon which he was sure all Laws were founded) he could be content to suffer still, though his Im-

prisonment had been so long already ; for that however he may have been Misrepresented for an Arbitrary Man, he would rather perish in his Prison than have any thing done for him which the Law would not warrant. But on the other side, he should be sorry that his Case should be made a Precedent against Law, and against English Liberty, which he was sure it would be, if he should be continued to lye under an Indefinite Imprisonment without being bailed ; and he said he was not ashamed to say, in the behalf of all Englishmen's Liberties, as well as of his own Case ; That it was a Case which did concern every Man to take care of in the Consequences of it, and which did cry loudly for Relief.

He then told the Court, That he had troubled them long, but that he hoped it would be excused in a Case of that Moment : And in the first place he said, he hoped it was plain, that That Court had it in their power to grant him Relief if they pleased.

That it was as plain, that there was nothing in the Lords Order against it, and that the practice of the Lords had been otherwise, even in the behalf of Commoners.

That it was apparent, that both that Court, and the Courts of Chancery and Exchequer, do relieve upon Appeals and Writs of Error, which are in the same Order with the Impeachments, and yet do in no sort meddle with the Judicature or Proceedings of the House of Lords.

That it was manifest, that let the Order be construed as any Man pleases, yet that Bailing could be no sort of Judging of any Proceedings in the Superior Court, but would leave the

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Judgment entirely to the Parliament, and would continue him a Prisoner in Law, bound to appear before that Extraordinary Court, whenever his Majesty shall be pleased to call it; and he said it was more evident, that otherwise he was an Indefinite Prisoner, and at the King's Will only for his Liberty, the Consequences of which every Man ought to lay to his Heart with a dread of it, whenever they should live under a Prince that might not be so Merciful as our present King; and he hoped the Court would duly consider it.

Besides all this he said, he durst confidently affirm, That there was not a Precedent since the Conquest, of any Man's being refused Bail under such Circumstances as his were: Whereas he said, the detaining of Men under long Imprisonment, ought either to have express Law for it, or a good Number of Precedents, and in good Times, to justify it, and not any single Instance or two (if they could be produced) which he thought they could not.

And he hoped that Precedent which he had already mentioned on his Majesty's behalf, would be very well considered, which was, How the King's Court should keep the King's Prisoner, and at the King's Suit, in the King's Prison, with the King's Pardon, and against the King's Will twice declared in that Court by his Attorney-General.

He said he should conclude with letting his Lordship know, that as the King himself had sufficiently declared, that there was no danger in the letting him have his Liberty, so he had such Bail to offer to his Lordship as would sufficiently

ficiently satisfy the World, that he should be forth-coming to answer when and where that Court should appoint; and then he hoped, the Two Chief Grounds for Detention in a Prison (*viz. The Danger of a Man's having his Liberty, and the Danger of his not appearing to abide his Trial.*) would be fully answered.

And if it might not seem too great a Vanity to say (altho' the true Reason does take away the Vanity of it, because it would not be for his, but for their own sakes, as what may happen to be their own Cases) he said, he doth believe, he could have the Major Part of the House of Lords to be his Bail in this Case, and some of those very Lords who were for the making of this Order, altho' not in that Sense which would seem to be put upon it. Inso-much, that there would be no more to fear in the granting him Bail, than, he hoped, there was either Reason or Justice to deny it. And he doubted not, but he was there before very just Judges, who would duly consider what he had said.

The Lord Chief Justice then speaking, did say, That the Earl of *Danby* had seemed to reflect upon the Court, as if they had denied him Justice in not hearing his Council.

Then the Earl of *Danby* desired Leave to interrupt his Lordship, saying, That his Lordship had mistaken him, for that he had said no such thing of that Court, nor did he mean of that Court; but said, It was very well known, that his Council had been forbid to plead for him

him in another Place; which was then acknowledged by Justice Jones to be very true.

The Lord Chief Justice then proceeded, and said; That for his Lordship's saying they needed not to fear, because, he did believe, the greatest Part of the Lords would be his Bail; That it was not the Fear of another Court that had any kind of Influence upon them, or that they should do such things as they feared to be called to an Account for; but that they were to govern themselves by the doing of Justice.

That they had heard his Lordship with a great deal of Patience; and that he had said many material Things, and with much Acuteness; And that they were not senseless of the Hardship of his Lordship's Case, and of the Greatness of his Sufferings.

That they were likewise sensible of the King's Desires, that his Lordship should have no longer Imprisonment than the Law requires. And he confessed, *That the King had done as much as lay in his Power.*

That it was not denied, because that Court could not Bail for Treason; *for that they had a Power to Bail in all Cases whatsoever, if the Court saw Cause.* Neither would the Indictment which was found against him about Sir Edmund-Bury Godfrey have hindred; *nor was it the Order of the House of Lords which hindred them.* But that they were to act there according to Law; and he pray'd his Lordship to consider, that they could not relieve him according to Law.

That he did agree to some Things mentioned by his Lordship; and that it was a very
hard

hard Case he should lye so long in Prison: How But here was the Misery; they could only compassionate him; for that his Lordship was imprisoned by an higher Hand; and where they had no Power to intermeddle.

He instanced in Indictments for Treasons, and several other great Crimes, in which they could Bail Men; but in this Case, the Supreme Jurisdiction of the Nation had laid their Hands upon it, which was attended by the House of Commons with an Impeachment.

Whether their Lordships had Cause, or not Cause, to commit his Lordship, they could not inspect; But that they ought to believe that his Lordship was justly Committed; and that their Lordships, in their mature Deliberation, would do nothing unjustly.

He said, That they had a Jurisdiction over all the Courts in the Kingdom, (that only excepted.) And as it would be very Indecent for an Inferior Court to Bail whom they had Committed, or to call their Processes in Question; so would it be in like manner for them to do in this Case, because the Lords exceed their Jurisdiction, and were above them. He said also, That the Opinion of all the Judges in England had been taken therein, and had delivered their Opinions; that he could not be Bailed: And that the Truth was, his Lordship was imprisoned by too High a Court for them to Bail him. For that his Lordship was not indefinitely Imprisoned, as he had alledged: For whenever his Majesty is pleased to Call a Parliament, his Lordship would have Remedy.

That the King has Power to do it when he pleases; and, for his People's Good, no doubt he will

will when he sees fit: But that at some time the Circumstances of State differ from other Times; and that it may not for some Space of Time be thought convenient: And tho' this may prove mischievous to a single Person, or to two or three Persons, yet such things must be endured for the Good of the Publick. He said also, That if that Court should commit a Man for High Treason, and the King should adjourn them from time to time, that Man could not be bailed until they sat again: So that he must confess (as his Lordship had said) that as this Case did happen, he was under a Temporary Indefinite Imprisonment.

He concluded, with telling his Lordship, That he must be contented to wait the King's Pleasure when he would call a Parliament.

That, for his Part, he was before of Opinion, that they could not bail his Lordship; and he was so still.

The Earl of Danby to all this answered, that he must confess, his Ears did tingle to hear his Lordship say, That the King had done as much as lay in his Power; when his Majesty is bound both by his Coronation Oath, and by the Laws, to see Right done at all times to his Subjects; and he desired to know, Whether this was not the King's Court, and whether he had not deputed a Power to them to see Right done to all accordingly?

He said also, That he was now under greater Amazement than before; since his Lordship had both granted, That this Court could bail any Treason, and that the Order of the House of Lords did not hinder it; which, till now, he confest, he had taken to be the only Obstruction to his Liberty.

That

That he had hoped, he had satisfied his Lordship, that although he was imprisoned by an higher Hand, yet that the Railing of him did not intermeddle with the Jurisdiction of that higher Judicature, and he had yet heard nothing to shew him that it did.

That for what his Lordship had said of the Opinion of all the Judges in England, being taken in his Case, he must needs inform his Lordship, That that was a Mistake; for that the Opinion of the Judges had never been asked in this particular Case, saving once, upon petitioning the King for Liberty to go to his Country House at *Wimbledon*, with a Guard, or otherwise, as his Majesty should think fit; which Petition was referred by his Majesty to the Judges: And they (according to their wonted Prudence and Caution) did only report, That they thought his Majesty could not legally grant the Petitioner's Request.

That whereas his Lordship said, That he was not indefinitely imprisoned, for that whenever his Majesty is pleased to call a Parliament, he will have Remedy; and that he must be content to await the King's Pleasure when he will call a Parliament; He took those to be fuller Arguments, than any himself had made, to prove, That his Imprisonment was Indefinite, and at the King's Pleasure; so that he was now more fully confirm'd than ever to be of that Opinion, and wish that every Man, that heard that Doctrine given for Law, might fully consider the Consequences of it.

He said further, That his Lordship had mistaken him, in thinking that he had said he was under a Temporary Indefinite Imprisonment; for that he had said he was under an Absolute Indefinite

definite Imprisonment: And that his Lordship had rather proved him to be so, than shewed any thing to the contrary; nor did he know what *Temporary Indefinite* did mean.

The Lord Chief Justice then said, That he was not a Judge at that time when the Judges Opinions were asked; but desired his Brother *Jones* to relate how it was.

Mr. Justice *Jones* then said, That he remembered the Case had been put to the Judges, Whether the Lords in the *Tower* might be bailed, and that it was then the Opinion of the Judges that they might not: But he said, he did think the Earl of *Danby* was not particularly concerned in the Question at that time, but that it related to the Popish Lords only, and that there was much Difference betwixt his Lordship's Case and theirs; besides, he did think, that was at a Time when there was a Day appointed for the Meeting of a Parliament.

The Earl of *Danby* then said, that the Question which was put at that time to the Judges about the Popish Lords, did not concern his Case at all; for that it differed from theirs in very many Particulars, which he had already mentioned, *viz.* Of no Oath against him; No special Treason alledged, &c. which he was loth to trouble them with repeating again; but he supposed that the then Opinion of the Judges, ought not to be made any Argument against him.

He said also, That the Lord Chief Justice had argued very strongly for him: For that it was true, That the King might call a Parliament when he pleased; but if therefore a Man must stay
in

in Prison till the King did please to do so; he may (by that very Argument) be there all his Life-time, if the King please; which confirms what he had been a great Part of this time, labouring to prove: And he said, he must confess, he did expect to have heard stronger and more powerful Arguments to have convinc'd him, that he was in the Wrong in what he had said; but that now he was more encourag'd than before, not to give over a Cause which did so much concern every Man in England.

The Lord Chief Justice then said, That his Lordship was mistaken in believing that that Court did keep him in Prison; for that he was not kept in Prison by them, but by a Superior Court, which was too big for them to meddle with, or to examine what they did.

To this his Lordship answered, That he had Wrong done him, which must be done by some-body, and that it was a Maxim of the Law, *That the King could do no Man Wrong* (being advised by his Courts); besides, that his Majesty had twice shew'd his Consent in that Court to have him bail'd. Neither could he say, that the Lords did him Wrong, because there was nothing in their Order to hinder his being bailed, (besides their own Practice to the contrary); and it seem'd now to be said, that it was by the Law, and not by the Order, that he was kept a Prisoner. He said, he would not say that That Court did keep him a Prisoner, but by some-body he was sure he was kept Prisoner; but perhaps it might be by the Stars, since he could not find who it was upon Earth that did it.

He concluded, that if he were legally imprisoned, yet by *Magna Charta* and the *Petition of Right*, &c. it was impossible for an *Englishman* to be without some certain Prospect of Relief in a reasonable time, they being to have Justice done them by the Law at all times, and without Delay; and that he was now in the Kings proper Court for Justice; wherefore as his Lordship had given his own Opinion, so he did desire that every Judge would be pleased to deliver theirs severally.

Then Mr. Justice *Jones* said, That he was not ready to give any present Opinion, there having been so much, and some things so materially said by his Lordship: But that for his better Satisfaction, he did desire to ask his Lordship a Question, in a Point which did much stick with him, and would go a great way in guiding his Judgment; and he was confident that his Lordship was as able to give him an Answer to it, as any Man; which was this, His Lordship (he said) had been charg'd with Treason by an Impeachment, and had pleaded a Pardon to the Impeachment before the Lords; He said he took that Plea to be a *Tacit Confession of Guilt in Law*, (though the Party were never so innocent) and then it had been a *Tacit Pleading of Guilty*; insomuch that he did believe, there could be no Admittance of any second Plea; and if so, he did confess, he did not see how that Court could then have any thing to do with his Lordship in that Case; but it was what he had not well considered (though at present he took the Law to be so) and he did desire to hear what his Lordship did say to that?

His

His Lordship answered, That he gave him great Thanks for letting him clear any Objections, and giving him Liberty to answer them as well as he could. That this indeed was a Question of Law, which he was but little vers'd in, but that he was at present able to say, That he had read the Opinions of some great Men of the Law, to be otherwise; and instanced what the Lord Coke had said upon the Case of *Gravesend*, Bishop of *London*, 7. E. 3. who did get a Writ of Discharge to the King's Bench, and did not take a Pardon; upon which he observed the said Lord Coke to have said, That it may be thought that the taking of a Pardon would have implied a Confession of the Fault, and therefore went a new way; but that was a Mistake, for that no Man that is wise and well advised, will refuse God and the King's Pardon, how often so ever he may have it; for there is no Man but offendeth God and the King almost every day, and the Pardon is the safest and surest way.

And though at present, he said, he was not provided of Precedents in the Case, yet he remembered there was a Case of a Coyner tried at *Durham* upon a Pardon, where the Pardon proved Defective, and yet he was allow'd to plead over.

And he told him, That the same Question had been moved in the House of Lords upon his own Case, where divers Lords had declared themselves, That they hoped it should never pass for Law amongst them, that a Man should not have one Plea for his Life; and gave for Reason, that if a Pardon was pleaded, and not admitted to be good, then the Prisoner had depended upon what he thought had been a good Plea, but was adjudged by the Court

Court not to be so, and then if he should not be admitted to plead over, it would be to ensnare a Man's Life, without giving him any Plea at all for it. And he concluded, saying, He thought that this Question was rather going into the Merits of his Cause, than to what he only demanded, which was but Bail.

Mr. Justice *Dolben* then said, He must acknowledge there was a vast Difference betwixt his Lordship's Case, and the Case of the Popish Lords in the *Tower*, in many material Particulars, which his Lordship had mentioned; and he must confess that he thought it one of the hardest Cases in England. He said also, that he could not but differ from what his Brother *Jones* had said, as to the not having Liberty to plead over; for that he was of Opinion his Lordship ought not to be debarr'd from having a second Plea, if the Pardon should be overruled; and (if I did not mistake him) he cited the Instance of one *Hesley's* Case (or such a Name) and he said, that his Lordship had said so many things of great Consequence, that he thought it did very well deserve further Consideration; but if he should be put to give any present Answer, he must then say (as my Lord Chief Justice had done) that he thought they could not bail his Lordship; but he thought it might well deserve further Consideration.

Mr. Justice *Raymond* then said, That his Lordship's Case had so many weighty Circumstances in it, as ought to make it to be very well considered, before any Opinion could be delivered in it. That for what had been said by his Brother *Jones*, about the Pleading over or not, he thought that did not properly lie be-

fore them in that Place ; That his Lordship had said *some things, to which he thought full Answers might be given ;* but that he had also said *some things, to which he thought it would not be so easy to answer.* That for his Part, he thought it was a Case which might well deserve the Consideration of more of the Judges, betwixt this and the next Term ; and that he must acknowledge he must further consider it, before he would presume to give any Opinion at all upon it.

A Council at the Bar then moved, That a Rule of Court might be made to bring his Lordship thither again, the first Day of the next Term.

The Lord Chief Justice seemed displeased with the Forwardness of that Council ; and the Earl of *Danby* excused it, saying, It was not moved by his Desire or Directions ; but said, That was all alike to him, whether there were any Rule of Court or no ; for that they were like to be troubled with him again, and that he should not easily give over a Cause, wherein he took the Liberty of the Subject in general to be as deeply concern'd as himself, and wherein he had found so little to be said against him, that he did believe he should be as troublesome to them as ever Judge *Jenkins* had been heretofore in the Defence of *English Liberty*.

The Lord Chief Justice then standing up, said, my Lord, your Lordship must for the present be content to be remanded ; and speaking to the Lieutenant of the *Tower's* Officer, told him, he must take back his Prisoner.

And then the Lord Chief Justice immediately left the Court.

His

*His Majesty's Declaration to all his
Loving Subjects, touching the Cau-
ses and Reasons that moved Him
to Dissolve the Two last Parlia-
ments.*

IT was with exceeding great Trouble, that We were brought to the Dissolving of the Two last Parliaments, without more Benefit to Our People by the Calling of them: But having done Our Part, in giving so many Opportunities of providing for their Good, it cannot be justly imputed to Us, that the Success hath not answered Our Expectation.

We cannot at this time but take notice of the particular Causes of Our Dissatisfaction, which at the beginning of the last Parliament, We did recommend to their care to avoid, and expected We should have had no new Cause to remember them.

We Open'd the last Parliament which was held at *Westminster*, with as Gracious Expressions of Our Readiness to satisfy the Desires of Our Good Subjects, and to secure them against all their just Fears, as the weighty Consideration, either of preserving the Establish'd Religion, and the Liberty and Property of Our Subjects at home, or of Supporting Our Neighbours and Allies abroad, could fill Our Heart with, or possibly require from Us.

And We do solemnly Declare, That We did intend, as far as would have consisted with the

very Being of the Government, to have Comply'd with any thing, that could have been propos'd to Us to accomplish those Ends.

We ask'd of them the Supporting the Alliances We had made for the Preservation of the General Peace in *Christendom*; We recommended to them the further Examination of the Plot; We desir'd their Advice and Assistance concerning the Preservation of *Tangier*; We offer'd to concur in any Remedies that could be propos'd for the Security of the Protestant Religion, that might consist with preserving the Succession of the Crown, in its due and legal Course of Descent; to all which We met with most unsuitable Returns from the House of Commons: Addressee, in the nature of Remonstrances, rather than of Answers; Arbitrary Orders for taking Our Subjects into Custody, for Matters that had no relation to Privileges of Parliament; strange illegal Votes, declaring divers Eminent Persons to be Enemies to the King and Kingdom, without any Order or Process of Law, any hearing of their Defence, or any Proof so much as offer'd against them.

Besides these Proceedings, they Voted as followeth, on the 7th of *January* last;

Resolved, That whosoever shall Lent, or cause to be Lent by way of Advance, any Money upon the Branches of the King's Revenue, arising by Customs, Excise, or Hearth-money, shall be adjudged to hinder the Sitting of Parliaments, and shall be responsible for the same in Parliament.

Re-

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Resolved, That whosoever shall buy any Tally of Anticipation, upon any part of the King's Revenue, or whosoever shall pay any such Tally hereafter to be struck, shall be adjudged to hinder the Sitting of Parliaments, and shall be responsible for the same in Parliament.

Which Votes, instead of giving Us Assistance to support Our Allies, or enable Us to preserve Tangier, tended rather to disable Us from Contributing towards either, by Our Own Revenue or Credit; not only exposing Us to all Dangers that might happen either at home, or abroad; but endeavouring to deprive Us of the Possibility of Supporting the Government it self, and to reduce Us to a more helpless Condition than the meanest of Our Subjects.

And on the 10th of the same Month they pass another Vote, in these Words:

Resolved, That it is the Opinion of this House, That the Prosecution of Protestant Dissenters upon the Penal Laws, is at this time grievous to the Subject; a weakening of the Protestant Interest, an Encouragement to Popery, and dangerous to the Peace of the Kingdom.

By which Vote, without any regard to the Laws establish'd, they assumed to themselves a Power of suspending Acts of Parliament, whereas Our Judges and Ministers of Justice neither can, nor ought, in Reverence to the Votes of either or both the Houses, break the Oaths they have taken, for the due and impartial Execution of our Laws; which by Expe-

rience have been found to be the best Support, both of the Protestant Interest, and of the Peace of the Kingdom.

These were some of the unwarrantable Proceedings of that House of Commons, which were the occasion of Our parting with that Parliament.

Which We had no sooner Dissolv'd, but We caus'd another to be forthwith Assembled at Oxford; at the Opening of which, We thought it necessary to give Them warning of the Errors of the former, in hopes to have prevented the like Miscarriages; and We requir'd of Them to make the Laws of the Land their Rule, as We did, and do resolve, they shall be Ours: We further added, That what We had formerly and so often Declared concerning the Succession, we could not depart from it: But to remove all reasonable Fears that might arise from the Possibility of a Popish Successor's coming to the Crown, if Means could be found, that in such a Case, the Administration of the Government might remain in Protestant Hands, We were ready to hearken to any Expedient, by which the Religion Establish'd might be Preserv'd, and the Monarchy not Destroy'd.

But contrary to Our Offers and Expectation, We saw, that no Expedient would be entertain'd but that of a total Exclusion, which We had so often declar'd, was a Point, that in Our Own Royal Judgment, so nearly concern'd Us both in Honour, Justice, and Conscience, that We could never consent to it: In short, We cannot, after the sad Experience We have had of the late Civil Wars, that Murder'd Our Father of Blessed Memory, and ruin'd the Monarchy

narchy, consent to a Law, that shall establish another most Unnatural War, or at least make it necessary to maintain a Standing Force for the Preserving the Government and the Peace of the Kingdom.

And We have Reason to believe, by what pass'd in the last Parliament at *Westminster*, that if We could have been brought to give Our Consent to a Bill of Exclusion, the Intent was not to rest there, but to pass further, and to attempt some other Great and Important Changes even in Present.

The Business of *Fitz-Harris*, who was Impeach'd by the House of Commons of High-Treason, and by the House of Lords refer'd to the ordinary Course of Law, was on the sudden carried on to that Extremity, by the Votes which the Commons pass'd on the 26th of *March* last, that there was no possibility left of a Reconciliation.

The Votes were these,

Die Sabbati 26 Martii, post Meridiem.

Resolved, That it is the undoubted Right of the Commons, in Parliament Assembled, to Impeach before the Lords in Parliament any Peer or Commoner, for Treason, or any other Crime or Misdemeanor; and that the refusal of the Lords to proceed in Parliament upon such Impeachment, is a denial of Justice, and a violation of the Constitution of Parliament.

Resolved, That in the Case of *Edward Fitz-Harris*, who by the Commons hath been Impeach'd of High Treason before the Lords, with a Declaration, That in convenient Time they would bring up the

Articles against him, for the Lords to Resolve, That the said Fitz-Harris should be proceeded with according to the Course of Common Law, and not by way of Impeachment at this time, is a Denial of Justice, and a Violation of the Constitution of Parliaments, and an Obstruction to the further Discovery of the Popish Plot, and of great danger to His Majesty's Person, and the Protestant Religion.

Resolved, That for any Inferior Court to Proceed against Edward Fitz-Harris, or any other Person lying under an Impeachment in Parliament, for the same Crimes, for which he or they stand Impeach'd, is a high Breach of the Privilege of Parliament.

It was a Matter extremely sensible to Us, to find an Impeachment made use of to delay a Tryal, that We had directed against a profess'd Papist, charg'd with Treasons against Us of an extraordinary Nature: And certainly the House of Peers did themselves Right in refusing to give Countenance to such a Proceeding.

But when either of the Houses are so far transported, as to vote the Proceedings of the other to be a Denial of Justice, a Violation of the Constitution of Parliaments, of Danger to our Person and the Protestant Religion, without Conferences first had to examine upon what Grounds such Proceedings were made, and how far they might be justified; This puts the Two Houses out of Capacity of transacting Business together, and consequently is the greatest Violation of the Constitution of Parliaments.

This was the Case; and every Day's Continuance being like to produce new Instances
of

of further Heat and Anger between the Two Houses, to the Disappointment of all Publick Ends, for which they were call'd, we found it necessary to put an End to this Parliament likewise.

But notwithstanding all this, let not the restless Malice of ill Men, who are labouring to poyson our People, some out of Fondness of their old beloved Commonwealth-Principles, and some out of Anger at their being disappointed in the particular Designs they had for the Accomplishment of their own Ambition and Greatness, persuade any of our good Subjects, that we intend to lay aside the Use of Parliaments: For we do still declare, That no Irregularities in Parliaments, shall ever make us out of Love with Parliaments, which we look upon as the best Method for healing the Distempers of the Kingdom, and the only Means to preserve the Monarchy in that due Credit and Respect which it ought to have both at home and abroad.

And for this Cause we are resolved, by the Blessing of God, to have frequent Parliaments; and both in and out of Parliament, to use our utmost Endeavours to extirpate Popery, and to redress all the Grievances of our good Subjects, and in all things to govern according to the Laws of the Kingdom.

And we hope that a little time will so far open the Eyes of all our good Subjects, that our next Meeting in Parliament, shall perfect all that Settlement and Peace which shall be found wanting either in Church or State.

To which, as we shall contribute our utmost Endeavours, so we assure our selves, That we shall

shall be assisted therein by the Loyalty and good Affections of all those who consider the Rise and Progress of the late Troubles and Confusions, and desire to preserve their Country from a Relapse.

And who cannot but remember, That Religion, Liberty and Property were all lost and gone, when the Monarchy was shaken off, and could never be reviv'd till that was restored.

Given at our Court at Whitehall the Eighth Day of April, 1681.

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shall be assisted therein by the Loyalty and good Affections of all those who consider the Rise and Progress of the late Troubles; and Contrivance and design to receive their Country from

And who cannot but remember, That Reli- gion, Liberty and Property were all lost and gone, when the Monarchy was shaken off.

CONCLUSION.

THE foregoing Declaration of his Majesty King *Charles II.* sufficiently shows us the Spirit of those Times. It was thought fit to assign the *Treason* for which the *Popish* Lords were *Impeach'd*; but the Earl of *Danby* was only *Impeach'd* for having *Traiterously* committed That, which he was not to know. — I hope these *Memoirs* have fully answer'd the Intent of their Publication, in restoring to one of the most Deserving Noblemen, that Impartial Justice due to him; and of which a Deprivation has been attempted (for some By-Ends) by one of the most Mercenary Writers of these Times; of whom it may without the least Injustice be averr'd, that he makes no other Use of his Pen, but Barely to *Prostitute it for his Interest*. I shall conclude all with Observing, That while the Publick at this Juncture are in daily Expectation of seeing the Proceedings upon a late *Impeachment*, which has occasion'd

tion'd no small Report : For a clearer Light therein, the Case of this Noble Lord is very Proper to be Consulted : And the Measure of the Proceedings in Both [the Tryal of the last Excepted] will be found Parallel in many Instances.



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THE
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